162 U.S. 664

162-664

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 801.

FRANCIS A. COFFIN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED NOVEMBER 21, 1895.

(16,091.)

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a Law.

UNITED STATES OF AMERICA:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Indiana, wherein Francis A. Coffin is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Circuit Court of the United States, District of Indiana.

Witness the Hon. William A. Woods, one of the judges of the circuit court of the United States for the district of Indiana, this 26th day of October, in the year of our Lord one thousand eight hundred and ninety-five.

WM. A. WOODS, *Judge.*

On this 28 day of October, in the year of our Lord one thousand eight hundred and ninety-five, personally appeared John E. Foley before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Frank B. Burke.

JOHN E. FOLEY.

Sworn to and subscribed the 28 day of October, A. D. 1895.

NOBLE C. BUTLER, *Clerk.*

Service, 2.00.

b UNITED STATES OF AMERICA:

The President of the United States of America to the judge of the district court of the United States for the district of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said district court, before you, between The United States of America and Francis A. Coffin, a manifest error hath happened, to the great damage of the said Francis A. Coffin, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and

proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 26th day of October, A. D. 1895.

NOBLE C. BUTLER, *Clerk.*

1 Pleas of the district court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and ninety-five, before the Honorable John H. Baker, judge of said district court of the United States for the district of Indiana.

UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN. } No. 4926. Violation of National Banking Law.

Be it remembered that heretofore, to wit, at the November term of said court, on the 21st day of December, 1893, the grand jurors of the United States impanneled, sworn, and charged to inquire in and for the body of said district returned into court an indictment in the above-entitled cause indorsed by their foreman "A true bill," in the words following, to wit:

UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

In the District Court of the United States for the District of Indiana, November Term, A. D. 1893, at Indianapolis.

The grand jurors of the United States within and for the district of Indiana, impaneled, sworn and charged in said court, at the term aforesaid, to inquire for the United States, within and for the district aforesaid, upon their oaths present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of March, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association,

with intent to injure and defraud said association, in a large sum, to wit: the sum of five thousand eight hundred and two dollars and eighty-four cents; that is to say: the Indianapolis Cabinet Company of Indianapolis, Indiana, presented to said bank and to the said Theodore P. Haughey, as such president thereof, a certain bill of exchange, drawn by said Indianapolis Cabinet Company on the Indianapolis Desk Company of London, England, for the sum of one thousand one hundred and ninety-four pounds sterling, and due on June 1st, 1893, which said bill of exchange was received by said Theodore P. Haughey, and placed to the credit of the said Indianapolis Cabinet Company upon the books of said bank, and the said Indianapolis Cabinet Company thereupon drew its check for said sum upon the said bank, which check was then and there paid by said bank, under the direction of said Theodore P. Haughey; that said Indianapolis Desk Company of London, England, did not owe said Indianapolis Cabinet Company any sum whatever; that said Theodore P. Haughey failed and refused to send said bill of exchange forward for collection whereby said sum was lost to said association; that said sum was so wilfully misapplied to the use and benefit of the Indianapolis Cabinet Company as aforesaid. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

2 And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the first day of March, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand eight hundred and two dollars and eighty-four cents.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Second Count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twentieth day of February, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on

a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association without authority of the directors thereof with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of eight thousand six hundred and twenty-six dollars and fifty cents, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the care custody and control of the funds credits and assets of said association and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twentieth day of February, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of eight thousand six hundred and twenty-six dollars and fifty cents.

Contrary to the form of the statute of the United States in such case, made and provided, and against the peace and dignity of the United States of America.

Third Count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, in the State

of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association which were then and there under his control with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of six thousand three hundred and eighteen dollars, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

3 And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds, credits of said association, to wit: the sum of six thousand three hundred and eighteen dollars.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Fourth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twentieth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, in the State of Indiana, did then and there by virtue of his said office as

president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, which were then and there under his control, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of three thousand, two hundred and seventy-two dollars and twenty-nine cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; and all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit, the twentieth day of May, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand two hundred and seventy-two dollars and twenty-nine cents.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Fifth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the tenth day of December, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of

the bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum to wit: the sum of seven thousand and six dollars, by then and there paying and causing to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

4 And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully knowingly and feloniously and with intent to injure and defraud said association, on to wit: the tenth day of December, in the year of our Lord, one thousand eight hundred and ninety-two aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of seven thousand and six dollars, aforesaid.

Contrary to the form of the statute of the United States in such case, made and provided and against the place and dignity of the United States of America.

Sixth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the tenth day of January, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds

and credits of the said association, without authority of the directors thereof with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of four thousand, one hundred and thirty-one dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the State and district of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the tenth day of January, in the year of our Lord, one thousand eight hundred and nine-three aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of four thousand one hundred and thirty-one dollars, aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Seventh Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the second day of December, in the year of our Lord, one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority

of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of five thousand, two hundred and ninety-seven dollars, and forty cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the second day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid to wrongfully, unlawfully feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand two hundred and ninety-seven dollars and forty cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Eighth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-third day of September, in the year of our Lord, one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said asso-

ciation, without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of three thousand nine hundred and sixty dollars and eighty-four cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the twenty-third day of September, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand nine hundred and sixty dollars and eighty-four cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Ninth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the fourteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of

the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to
6 the grand jurors unknown, in a large sum, to wit: the sum of three thousand four hundred and sixty-seven dollars and twenty-three cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association as aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the fourteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand four hundred and sixty-seven dollars and twenty-three cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Tenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the eighteenth day of February, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys,

funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown, in a large sum, to wit: the sum of five thousand five hundred and twenty-five dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said sum has been thereby wholly lost to said association. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the eighteenth day of February, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand five hundred and twenty-five dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

7 *Eleventh Count.*

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the

said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of one thousand eight hundred and fifty dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said sum had been thereby wholly lost to said association; that said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president, he was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the seventeenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of one thousand eight hundred and fifty dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twelfth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twelfth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association,

with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of one thousand, six hundred and ten dollars and seventy-two cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said sum has been thereby wholly lost to said association; that said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew: that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president, he was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

8 And the grand jurors aforesaid do further say that Perceival B. Coffin, Francis A. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the twelfth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, to wit: the sum of one thousand six hundred and ten dollars and seventy-two cents aforesaid contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Thirteenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the ninth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and

without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and other persons, to the grand jurors unknown, in a large amount, to wit: the sum of ten thousand, one hundred and six dollars and eight cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there paying out and causing to be paid out of the moneys, funds and credits of said association said sum of ten thousand, one hundred and six dollars and eight cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons, to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time, said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey, then and there well knew; whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid, was done and made as aforesaid with intent to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of ten thousand, one hundred and six dollars and eight cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Fourteenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the nineteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the thirteenth day of

July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, and other persons, to the grand jurors unknown, in a large amount, to wit: the sum of nine thousand, one hundred and thirty-two dollars and nineteen cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there paying out and causing to be paid out of the moneys, funds and credits of said association said sum of nine thousand, one hundred and thirty-two dollars and nineteen cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons, to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time, said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey, then and there well knew; whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid was done and made as aforesaid with intent to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

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And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the nineteenth day of June in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the thirteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of nine thousand, one hundred and thirty-two dollars and nineteen cents aforesaid.

Contrary to the form of the statute of the United States in such

case made and provided and against the peace and dignity of the United States of America.

Fifteenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the third day of March, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and other persons to the grand jurors unknown, in a large amount, to wit: the sum of twelve thousand seven hundred and thirty-two dollars and fifty-one cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there, unlawfully, feloniously and willfully paying out and causing to be paid out of the moneys, funds and credits of said association said sum of twelve thousand, seven hundred and thirty-two dollars and fifty-one cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid, was done and made as aforesaid with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and

State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association on, to wit: the third day of March, in the year of our Lord, one thousand eight hundred and ninety-three and on divers times between said date and the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of twelve thousand seven hundred and thirty-two dollars and fifty-one cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America..

Sixteenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits, being to the grand jurors unknown, in a large amount, to wit: the sum of ten thousand one hundred and six dollars and eight cents, by then and there permitting and causing said sum aforesaid to be withdrawn from and paid out of the moneys, funds and credits of said association, in the form of overdrafts, upon checks drawn by said Indianapolis Cabinet Company upon said association, the said Theodore P. Haughey then and there well knowing that said Indianapolis Cabinet Company had no moneys, funds or credits in said association to its credit, and was not entitled to draw any sum from said association and that said Indianapolis Cabinet Company was insolvent, as the said Theodore P. Haughey then and there well knew. That said Theodore P. Haughey did all of said acts in bad faith and with intent to injure and defraud said association. That said Theodore P. Haughey as such president aforesaid, was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said

association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of ten thousand one hundred and six dollars and eight cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Seventeenth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day
11 of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars, by then and there cashing, discounting and paying for the use and benefit of said Indianapolis Cabinet Company, out of the funds of said association, a large number of worthless and insolvent notes, drafts and bills of exchange being drawn upon and by divers persons, firms and companies, and corporations each and all of whom were then insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was wholly lost to said association; with intent then and there and thereby to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted

and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Eighteenth Count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars, by then and there cashing, discounting and paying for the use and benefit of said Indianapolis Cabinet Company, out of the funds of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, said notes, drafts and bills of exchange being drawn upon and by divers persons, firms and companies, each and all of whom were then insolvent, as the said Theodore P. Haughey then and there well knew with intent then and there and thereby

to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully,
12 unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Nineteenth Count.

The grand jurors, aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of said moneys, funds and credits being to the grand jurors unknown; by then and there and between said dates loaning and causing to be loaned the moneys, funds and credits of said association, to the Indianapolis Cabinet Company in the sum of three hundred and seventy-five thousand dollars, said sum being much larger than a sum equal to ten per cent. of the capital stock of said association, the capital stock of said association being then

and there three hundred thousand dollars, whereby said sum of three hundred and seventy-five thousand dollars became lost to said association; with intent then and there and thereby to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin, and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, knowingly, willfully and feloniously and with intent to injure and defraud said association on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twentieth Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of such moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw their account in said sum and paying and causing said sum to be paid out of the moneys, funds and

credits of said association, and to be withdrawn from said
13 association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said association and having no moneys, funds and credits in said association to its credit on said day; said Indianapolis Cabinet Company being then and there insolvent, whereby said sum became wholly lost to said association; the said Theodore P. Haughey then and there knowing that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank and that Indianapolis Cabinet Company was then and there insolvent: all of said acts aforesaid then and there being done and performed with the intent to injure and defraud said association: that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the moneys, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Twenty-first Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one and on divers dates and times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as

president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large sum, to wit: the sum of three hundred and seventy-five thousand dollars, a more particular description of which is to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw its account at said association in said sum, by paying and causing to be paid out to the said Indianapolis Cabinet Company and to its credit upon divers checks and drafts drawn by said Indianapolis Cabinet Company upon said banking association, out of the moneys, funds and credits of said association, said sum of three hundred and seventy-five thousand dollars; that said Indianapolis Cabinet Company during all of said time had no moneys, funds or credits in said association to its credit against which it could check, and said Indianapolis Cabinet Company was not entitled to check out or withdraw any part of said sum of three hundred and seventy-five thousand dollars from said association. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby said sum became lost to said association. All of said acts aforesaid being then and there done and performed by the said Theodore P. Haughey, with intent then and there to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our
14 Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Twenty-second Count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the first day of January, in the

year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there as president of said bank, and without authority of the board of directors unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of such moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw their account in said sum and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said association to and having no moneys, funds and credits in said association to its credit on said day; said Indianapolis Cabinet Company being then and there insolvent, the said Theodore P. Haughey then and there knowing that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank and that said Indianapolis Cabinet Company was then and there insolvent: all of said acts aforesaid then and there being done and performed with the intent to injure and defraud said association: That as such president aforesaid the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the funds, moneys, credits and assets of said association, and the general superintendence of its affairs and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twenty-third Count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers dates and times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis in the State of Indiana, which said association had been theretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large sum, to wit: the sum of three hundred and seventy-five thousand dollars, a more particular description of which is to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw its account at said association in said sum, by paying and causing to be paid out to said Indianapolis Cabinet Company and to its credit, upon divers checks and drafts drawn by said Indianapolis Cabinet Company upon said banking association, out of the moneys, funds and credits of said association, said sum of three hundred and seventy-five thousand dollars; that said Indianapolis Cabinet Company during all of said time had no moneys, funds or credits in said association to its credit against which it could check, and said Indianapolis Cabinet Company was not entitled to check out nor withdraw any part of said sum of three hundred and seventy-five thousand dollars from said association. That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey then and there well knew. All of said acts aforesaid being then and there done and performed by the said Theodore P. Haughey with intent then and there to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

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And the grand jurors aforesaid do further say that, Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the district and

State aforesaid, did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-three, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twenty-fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously, wilfully and knowingly misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more par-

ticular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there to deceive any agent appointed and any agent and agents who might thereafter be appointed by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown;

the said Theodore P. Haughey, as such president aforesaid,
16 then and there having the custody, control and care of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said dates and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-fifth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors of said bank, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association with intent to convert the same to the use of the Indianapolis

Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum and by paying and causing said sum to be paid out of the moneys, funds and credits of said association; and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of which said acts aforesaid being then and there done and performed with intent then and there and thereby to deceive certain officers and directors of said association whose names are to the grand jurors unknown.

The said Theodore P. Haughey, the president of said bank as aforesaid, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to deceive certain officers and directors of said association whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit, the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

17 *Twenty-sixth Count.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said

district, at the district aforesaid, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without the authority of the board of directors of said bank, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars; by then and there and between said dates permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association; and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company, the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there to injure and defraud said association and certain companies, bodies politic, bodies corporate, and individual persons whose names are to the grand jurors unknown.

That as such president aforesaid, the said Theodore P. Haughey was then and there entrusted and charged, by the board of directors of said association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin, and Percival B. Coffin, at the State and district of

Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-seventh Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Hughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, State of Indiana aforesaid, did then and there, by virtue of his said office as president
18 of said bank, and without authority of the board of directors of said bank, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company, in a large amount to wit: three hundred and fifty thousand dollars, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there permitting said Indianapolis Cabinet Company to overdraw its account with said bank in said sum: and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; that said Indianapolis Cabinet Company was, during all of said time, insolvent, as the said Theodore P. Haughey then and there well knew;

that said Theodore P. Haughey then and there well knew that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that said Indianapolis Cabinet Company had no moneys, funds or credits in said association during said time to its credit, and that said Indianapolis Cabinet Company was insolvent; that all of said acts aforesaid, were done and performed with intent then and there to deceive certain officers and directors of said association whose names are to the grand jurors unknown, the said Theodore P. Haughey as such president aforesaid then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to deceive certain officers and directors of said association, whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers other times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-eighth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey late of said district at the district aforesaid, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business at the said city of Indianapolis, State of Indiana aforesaid, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors of said bank, unlawfully, wilfully, knowingly and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company, in a large amount, to wit: three hundred and fifty thousand dollars, a more particular description of said moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis

Cabinet Company to overdraw its accounts with said bank in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; that said Indianapolis Cabinet Company was, during all of said time, insolvent as the said Theodore P. Haughey then and there well knew; that said Theodore P. Haughey then and there knew that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that said Indianapolis Cabinet Company had no moneys, funds or credits in said association during said time, to its credit, and the said Indianapolis Cabinet Company was insolvent, whereby a large part of said sum became lost to said association; that all of said acts
19 aforesaid, were done and performed with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown; that as such president aforesaid, the said Theodore P. Haughey was then and there entrusted and charged by the board of directors of said association, with the custody, control and care of the moneys, funds and credits of said association, and the general superintendence of its affairs;

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute, of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-ninth Count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred

and ninety-three, the said Theodore P. Haughey then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State of Indiana aforesaid, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, as aforesaid, did then and there, by virtue of his said office as president of the said bank, and without authority of the board of directors of the said association, unlawfully, knowingly and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use and benefit of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown; in a large amount, to wit: the sum of three hundred and fifty thousand dollars, by then and there permitting said Indianapolis Cabinet Company to overdraw its account to the amount of said sum, and in loaning to said Indianapolis Cabinet Company said sum at one and the same time; that the said Indianapolis Cabinet Company did, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and ninety-three, owe the said association for money loaned to said Indianapolis Cabinet Company, the said sum of three hundred and fifty thousand dollars; the said sum is largely in excess of ten per cent. of the capital stock of said association; the said capital stock of said association being, during all of said time, three hundred thousand dollars; with intent then and there and thereby to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown; the said Theodore P. Haughey, as such president aforesaid, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent to injure and defraud said association and certain companies bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

20 *Thirtieth Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present, that Theodore P. Haughey late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company, in a large amount, to wit: three hundred and fifty thousand dollars, a more particular description of such moneys, funds and credits being to the grand jurors unknown, by then and there permitting the said Indianapolis Cabinet Company to overdraw its account with said bank in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; the said Indianapolis Cabinet Company was, during all of said time, insolvent, as the said Theodore P. Haughey then and there well knew; that the said Theodore P. Haughey then and there well knew that the said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that the said Indianapolis Cabinet Company had no moneys, funds or credits in said association, during said time, to its credit, and that the said Indianapolis Cabinet Company was insolvent, that all of said acts aforesaid were done and performed with intent then and there to injure and defraud said association; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent to injure and defraud said association, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times be-

tween said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey to wrongfully, unlawfully, wilfully and feloniously misapply the moneys funds and credits of said association to wit: the sum of three hundred fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-first Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously, wilfully and knowingly misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting and causing the same to be withdrawn from said association upon divers checks and drafts upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being
21 entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds and credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent

then and there to injure and defraud said association; the said Theodore P. Haughey, as such president, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana as aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, to wrongfully, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-second Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of the said bank, and without authority of the board of directors, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount to wit: three hundred fifty thousand dollars, by then and there permitting said Indianapolis Cabinet Company to overdraw its account to the amount of said sum, and in loaning the said Indianapolis Cabinet Company said sum at one and the same time; that the said Indianapolis Cabinet Company did, on the 24th day of July, 1893, owe the said association for money loaned, the said sum of three hundred and fifty thousand dollars; that said sum is largely in excess of ten per cent. of the capital stock of said association; the said capital stock of said association being, during all of said time, three hundred thousand dollars; with intent then and there to injure and defraud said asso-

ciation; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana, aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent to injure and defraud the said association, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

22 *Thirty-third Count.*

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present; that at said district, on the 1st day of January, A. D. 1891, and on divers days and times between that day and the 25th day of July, A. D. 1893, Theodore P. Haughey, being then and there the president of the Indianapolis National bank, in the city of Indianapolis, in the district and State of Indiana, and as such president, being then and there and during all of said time, entrusted and charged by the board of directors of said bank, with the care, custody and control of its moneys, funds, credits and assets, and the general superintendence of its affairs; did then and there and during said time, unlawfully, knowingly, feloniously and wilfully misapply and convert the moneys, funds, credits and assets of said bank, in the sum of three hundred and fifty thousand dollars, to the use and benefit of the Indianapolis Cabinet Company, by then and there and during all of said time, unlawfully, wilfully, knowingly and feloniously paying and causing said sum to be paid out of the moneys, funds and credits of said bank, to said Indianapolis Cabinet Company, on and for divers worthless checks, drafts and bills of exchange, tendered and presented and given to; and accepted by said bank, by said Indianapolis Cabinet Company, without the knowledge or consent of the board of directors of said bank; with the intent then and there and thereby to unlawfully, wilfully, knowingly and feloniously injure and defraud said bank, and divers other persons to the grand jurors unknown.

And the grand jurors aforesaid, upon their oath aforesaid, further present that said The Indianapolis National bank was then and there and during all of said time, a national banking association organized and created under and by virtue of the laws of the United States, and was then and there and during all of said time, engaged in carrying on a banking business in the city of Indianapolis, in said State and district of Indiana.

And the grand jurors aforesaid, upon their oaths aforesaid do further present that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, late of said district at the district aforesaid, did then and there and during all of said time, unlawfully, wilfully, knowingly and feloniously, and with intent then and there to injure and defraud said banking association, on, to wit: the 1st day of January, A. D. 1891, and on divers times and days between that day and the 25th day of July, A. D. 1893, aid and abet the said Theodore P. Haughey to unlawfully, knowingly, wilfully and feloniously misapply and convert the moneys, funds and credits and assets of said bank as aforesaid contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be overdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit, that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a

large amount, a more particular description of which is to the grand jurors unknown, executed and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of which acts aforesaid being then and there done and performed with intent then and there and thereby to injure and defraud said association; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent then and there to injure and defraud said association, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid do further charge and present, that Theodore P. Haughey late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously, and wilfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there between said dates,

permitting the said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, in a large amount to wit; notes of Francis A. Coffin in the sum of, to wit: $21,927.99; notes of Percival B. Coffin in a large sum to wit: $27,196.75; the notes of the Indianapolis Cabinet Company in a large sum to wit: $35,739.29; the notes of the Indianapolis Plow Company in a large sum to wit: $30,240.25; notes of the Indianapolis Veneer and Panel Company in the sum of to wit: $31,422.93; notes and drafts on the American Desk and Seating Company, of Chicago, in a large sum to wit: $7,708.16; drafts on the Indiana Cabinet Company, of Boston, in the sum of to wit: $50,209.25; drafts on the Indianapolis Desk Company, of London, England in the sum of to wit: $40,837.21; drafts on the Indianapolis Office Furniture Company of New York in the sum of, to wit: $47,862.65; drafts on the United States Office Furniture Company in the sum of to wit: $26,062.52, and drafts on the Wooten Office Desk Company of Richmond, Indiana, in the sum of to wit: $48,565.33; that each and all of said persons and corporations were then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sums became lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there and thereby to injure and defraud said association; the said Theodore P. Haughey as said president then and there being entrusted by the board of directors with the custody, control and management of the moneys, funds and credits of said association and the general superintendence of its affairs.

24 And the grand jurors aforesaid, do further say that Francis A. Coffin Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent then and there to injure and defraud said association, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey,

as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid do further charge and present, that Theodore P. Haughey late of said district, at the district aforesaid, on to wit the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said organization had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, but without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars by then and there and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time, the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms companies and corporations, in a large amount, to wit: notes of Francis A. Coffin in the sum of, to wit: $21,927.99; notes of Percival B. Coffin in a large sum, to wit: $27,196.78; the notes of the Indianapolis Cabinet Company in a large sum, to wit: $35,739.29; the notes of the Indianapolis Plow Company in a large sum, to wit:

$30,240.25; notes of the Indianapolis Veneer and Panel Company in the sum of to wit: $31,422.93; notes and drafts on the American Desk and Seating Company, of Chicago, in a large sum, to wit: $7,708.16; drafts on the Indiana Cabinet Company, of Boston, in the sum of to wit: $50,209.25; drafts on the Indianapolis Desk Company, of London, England, in the sum of to wit: $40,837.21; drafts on the Indianapolis Office Furniture Company of New York in the sum of to wit: $47,862.65; drafts on the United States Office Furniture Company in the sum of to wit: $26,062.52 and drafts on the Wooten Office Desk Company of Richmond, Indiana, in the sum of to wit: $48,565.33; that each and all of said persons and corporations were then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum became lost to said association; all of said acts aforesaid being then and there done and performed with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said national banking association, the name and names of said agent and agents being to the grand jurors unknown. The said Theodore P. Haughey as said president then and there being entrusted by the board of directors with the custody, control and management of the moneys, funds and credits of said association and the general superintendence of its affairs.

And the grand jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously and with intent then and there to deceive any agent appointed and any agent and agents thereafter appointed by the Comptroller of the Currency to examine
25 the affairs of said association; the name and names of said agent and agents being to the grand jurors unknown, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-seventh Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain banking association then and there known as the Indianapolis National bank, of the city of Indianapolis, in the State and

district aforesaid, which said national banking association had been theretofore organized and created under and by virtue of the laws of the United States, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana, did then and there, with intent to injure and defraud the aforesaid Indianapolis National bank, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by the said Indianapolis National bank and known as Individual Ledger L., A. to M. at page 928 of said book, and under date of March thirtieth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

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which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in the aforesaid national banking association, moneys, funds and credits in the sum of twenty thousand four hundred and eighty dollars and seventy-six cents and was entitled to credit therefor upon the books of the said Indianapolis National bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company had not, on said day deposited the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents with the aforesaid national banking association, and was not entitled to credit on the aforesaid book of the said national banking association for the said sum of twenty thousand four hundred and eighty dollars and seventy-six cents, but was entitled to credit on the said book for a sum much less than the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents, aforesaid, to wit: the sum of seventeen thousand and twenty-seven dollars and five cents, more or less, less than the said sum of twenty thousand four hundred and eighty dollars and seventy-six cents, the exact amount being to the grand jurors unknown; that the aforesaid false entry so made as aforesaid by the said Theodore P. Haughey, was made with intent to injure and defraud said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association, on, to wit: the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-eighth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain banking association then and there known as the Indianapolis National bank, of the city of Indianapolis, in the State and district aforesaid, which said national banking association had been theretofore organized and created under and by virtue of the laws of the United States, and which said national banking
26 association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana, did then and there, with intent to injure and defraud the aforesaid Indianapolis National bank, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by the said Indianapolis National bank and known as Individual Ledger L., A. to M. at page 928 of said book, and under date of March thirtieth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

20 480 76

which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in the aforesaid national banking association, moneys, funds and credits in the sum of twenty thousand four hundred and eighty dollars and seventy-six cents and was entitled to credit therefor upon the books of the said Indianapolis National bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company had not, on said day deposited the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents with the aforesaid national banking association, and was not entitled to credit on the aforesaid book of the said national banking association for the said sum of twenty thousand, four hundred and eighty dollars and seventy-six cents, but was entitled to credit on the said book for a sum much less than the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents, aforesaid, to wit: the sum of seventeen thousand and twenty-seven dollars and five cents, more or less, less than the said sum of twenty thousand four hundred and eighty dollars and seventy-six cents, the exact amount being to the grand jurors unknown; that the aforesaid false entry so made as aforesaid by the said Theodore P. Haughey, was made with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said, The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown; on to wit: the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid in wrongfully, unlawfully, willfully and feloniously, making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-ninth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis bank, of the city of Indianapolis, in the State and district aforesaid, which said association had been theretofore organized and created under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 931 of said book, and under date of May ninth, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the figures following, to wit:

44000

which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day, deposited in said bank, moneys, funds and credits in the sum of forty-four thousand dollars, and was entitled to credit therefor upon the books of said bank; the said entry aforesaid, as the said Theodore P. Haughey then and
27 there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of forty-four thousand dollars, nor any part thereof with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry

made as aforesaid, by the said Theodore P. Haughey, was made with intent then and there to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid, do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Fortieth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis bank, of the city of Indianapolis, in the State and district aforesaid, which said association had been theretofore organized and created under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 931 of said book, and under date of May ninth, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the figures following, to wit:

44000

which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day, deposited in said bank, moneys funds and credits in the sum of forty-four thousand dollars, and was entitled to credit therefor upon the books of said bank; the said

entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of forty-four thousand dollars, nor any part thereof with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent then and there to injure and defraud said association.

And the grand jurors aforesaid do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association, on to wit: the ninth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as such president aforesaid, in wrongfully, unlawfully, willfully and feloniously making said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-first Count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, and State of Indiana, which said national
28 banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 930 of said book, and under the date of January 6th, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

23069 04

which said entry aforesaid, purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of twenty-three thousand and sixty-nine dollars and four cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid, as the said Theo-

dore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of twenty-three thousand and sixty-nine dollars and four cents, nor any part thereof, with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid by the said Theodore P. Haughey, was made with intent to injure and defraud the said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B Coffin, did then and there unlawfully, knowingly, willfully and feloniously, and with intent then and there to injure and defraud said association, on to wit: the sixth day of January, in the year of our Lord one thousand, eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid in wrongfully, unlawfully, willfully and feloniously, making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-second Count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, and State of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 930 of said book, and under the date of January 6th, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

23069 04

which said entry aforesaid, purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of twenty-three thousand and sixty-nine dollars and four cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to

wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of twenty-three thousand and sixty-nine dollars and four cents. nor any part thereof, with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid by the said Theodore P. Haughey, was made with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

29 And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the district and State of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, willfully, knowingly and feloniously making and causing to be made, said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-third Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on, to wit: the fifth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis, in the State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association, unlawfully, knowingly, willfully and feloniously, make and cause to be made in a book kept by said banking association and known as Individual Ledger L., A. to M., at page 930 of said book, and under the date of January 5th, 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said entry is in the words and figures following, to wit:

2723 10

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of two thousand seven hundred and twenty-three dollars and ten cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company, had not on said day deposited said sum of two thousand seven hundred and twenty-three dollars and ten cents, nor any part thereof, with said association, for which the said Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent to injure and defraud the said national banking association aforesaid.

And the grand jurors aforesaid do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously and with intent to injure and defraud said association, on, to wit: the fifth day of January, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid in wrongfully, unlawfully, and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-fourth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the fifth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis, in the State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association, unlawfully, knowingly, willfully and feloniously, make and cause to be made in a book kept by said banking association and
30 known as Individual Ledger L., A. to M. at page 930 of said book, and under the date of January 5th, 1893, and under the account of the Indianapolis Cabinet Company and in the credit column on said page, a certain false entry, which said entry is in the words and figures following, to wit:

2723 10

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of two thousand seven hundred and twenty-three dollars and ten cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company had not on said day deposited said sum of two thousand seven hundred and twenty-three dollars and ten cents, nor any part thereof, with said association, for which the said Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the State and district of Indiana aforesaid, did unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents thereafter appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the fifth day of January in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-fifth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the city of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association aforesaid, wrongfully, unlawfully, knowingly, willfully and feloniously

make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 929 of said book, and under date of September seventeenth in the year 1892 and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the words and figures following, to wit:

13273 09

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day aforesaid, deposited in said bank, moneys, funds and credits in the sum of thirteen thousand two hundred and seventy-three dollars and nine cents, and was entitled to credit therefor upon the books of the said national bank aforesaid; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not, on said day aforesaid, deposited said sum of thirteen thousand two hundred and seventy-three dollars and nine cents with the said national banking association, and was not entitled to credit on the said book of the said national banking association for the sum of thirteen thousand two hundred and seventy-three dollars and nine cents aforesaid, but was entitled to credit for a much less sum than the said sum of thirteen thousand two hundred and seventy-three dollars and nine cents, to wit: the sum of nine thousand dollars, more or less, less than the aforesaid sum of thirteen thousand two hundred and seventy-three
31 dollars and nine cents, the exact sum less being to the grand jurors unknown; that the said false entry so made as aforesaid, by the said Theodore P. Haughey, aforesaid, was made with intent to injure and defraud said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the district and State of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-sixth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of the

city of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association aforesaid, wrongfully, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L., A. to M., at page 929 of said book, and under date of September seventeenth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the words and figures following, to wit:

13273 09

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day aforesaid, deposited in said bank, moneys, funds and credits in the sum of thirteen thousand two hundred and seventy-three dollars and nine cents, and was entitled to credit therefor upon the books of the said national bank aforesaid; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not, on said day aforesaid, deposited said sum of thirteen thousand two hundred and seventy-three dollars and nine cents with the said national banking association, and was not entitled to credit on the said book of the said national banking association for the sum of thirteen thousand two hundred and seventy-three dollars and nine cents aforesaid, but was entitled to credit for a much less sum than the said sum of thirteen thousand two hundred and seventy-three dollars and nine cents, to wit: the sum of nine thousand dollars, more or less, less than the aforesaid sum of thirteen thousand two hundred and seventy-three dollars and nine cents, the exact sum less being to the grand jurors unknown; that the said false entry so made as aforesaid, by the said Theodore P. Haughey, was made with intent then and there and thereby to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, willfully, knowingly and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the seventeenth day of September, in the year

of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid, in wrongfully, unlawfully, willfully and feloniously, making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

32 *Forty-seventh Count.*

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-first day of December, in the year of our Lord one thousand, eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, unlawfully, feloniously, and willfully misapply the moneys, funds and credits of the said association, which were then and there under his control, with intent to convert the same to the use of the Indianapolis Cabinet Company, and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of six thousand, three hundred and eighteen dollars, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association as aforesaid, to wit: the sum of six thousand, three hundred and eighteen dollars.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-eighth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he, the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid, the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources,
33 liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "Resources." Dollars. Cts.

4. Overdrafts unsecured (see schedule)..... .... 2,802 68

b. On the schedule and under the head of "Loans and discounts."

Bad debts as defined in section 5204 Rev. Stat... .. $ None

c. Under the head of "Loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers."

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association, that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there were due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-eighth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he, the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid, the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources,
33 liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "Resources." Dollars. Cts.

4. Overdrafts unsecured (see schedule)..... .... 2,802 68

b. On the schedule and under the head of "Loans and discounts."

Bad debts as defined in section 5204 Rev. Stat... . $ None

c. Under the head of "Loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers."

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there were due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association, on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount, to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said day aforesaid, was liable to said association in a large sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to injure and defraud said association and divers persons whose names are to the grand jurors unknown.

And the grand jurors aforesaid further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully,
34 knowingly, willfully and feloniously, and with intent then and there to injure and defraud said association, and divers other persons whose names are to the grand jurors unknown, on to wit: the fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, wrongfully, knowingly, willfully and feloniously, to make said false entries in said report and statement aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-ninth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a bank-

ing business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid, the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources, liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "Resources." Dollars. Cts.

4. Overdrafts unsecured (see schedule)..... 2,802 68

b. On the schedule and under the head of "Loans and discounts."

Bad debts as defined in section 5204 Rev. Stat..... $ None

c. Under the head of "Loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers."

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid, in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

35 3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there were due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount, to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said day aforesaid, was liable to said association in a large sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names

of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to deceive certain officers and directors of said association, whose names are to the grand jurors unknown.

And the grand jurors aforesaid further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive certain officers and directors of said association, the names of said officers and directors being to the grand jurors unknown, on to wit: the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid wrongfully, unlawfully, willfully and feloniously to make said false entries in said report and statement aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Fiftieth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said
36 report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he the said Theodore

P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources, liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "Resources."	Dollars.	Cts.
4. Overdrafts unsecured (see schedule)	2,802	68

b. On the schedule and under the head of "Loans and discounts."

Bad debts as defined in section 5204 Rev. Stat..... $ None.

c. Under the head of "Loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers."

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid, in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm, including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there were due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association, on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said day aforesaid, was liable to said association in a large
37 sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to deceive any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors

unknown, aid and abet the said Theodore P. Haughey as aforesaid, wrongfully, unlawfully, willfully and feloniously to make the said false entries in said report and statement as aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

FRANK B. BURKE,
United States Attorney.

And afterwards, to wit, at the November term of said court, on the 13th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Francis A. Coffin, in person and by A. C. Harris, Esq., his attorney, also comes, and thereupon said defendant, being arraigned upon each and every count of said indictment, for plea thereto says he is not guilty.

And now, on motion of the attorney for the United States, the defendant Francis A. Coffin and John Roberts, William E. Kurtz, and Daniel W. Marmon, his sureties, in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Francis A. Coffin, be and appear in this court on this day and from day to day and term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

38 And at the same time, on said 13th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, also comes, and thereupon said defendant, being arraigned upon each and every count of said indictment, for plea thereto says he is not guilty.

And now, on motion of the attorney for the United States, the defendant Percival B. Coffin and John Roberts and Joseph R. Perry, his sureties, in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Percival B. Coffin, be and appear in this court on this day and from day to day and term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And afterwards, to wit, at the May term of said court, on the 1st day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and come also the defendants in person, the defendants Francis A. Coffin and Percival B. Coffin by Miller, Winter & Elam and Duncan & Smith, their attorneys, and the defendant Albert S. Reed by Lawson M. Harvey, his attorney, and the defendants Percival B. Coffin and Albert S. Reed by Claypool &
39 Claypool, their attorneys, and, this cause coming on to be tried here, comes a jury, to wit, Thomas H. Collier, John Davidson, Noah Garrett, Francis M. Gelvin, James Good, Reuben Hipsley, Noah N. Sims, Hilary Spalding, Peter Stoner, George W. Barnett, John O. Young, and Joseph A. Trotter, who, being duly impanneled and sworn, are now by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 22d day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having heard the residue of the evidence herein, thereupon the attorney for the United States says he will not further prosecute the 47th, 48th, 49th, and 50th counts of the indictment herein.

It is therefore considered by the court that said defendants, Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, and each of them, as to the 47th, 48th, 49th, and 50th counts of said indictment, do go hence thereof without day.

And the jury, having heard a part of the argument of counsel herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 28th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United
40 States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys also come, and the jury heretofore impanneled and sworn herein also come and return into court the verdict following, to wit:

We, the jury, find the defendants Francis A. Coffin & Percival B. Coffin guilty as charged in all the counts of the indictment & Al-

bert S. Reed guilty as charged in counts from thirty-seven to forty-six, inclusive, in the indictment.

JOSEPH A. TROTTER, *Foreman.*

And afterwards, to wit, at the May term of said court, on the 4th day of June, 1894, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come and file their motion on behalf of all and each of them for a new trial herein in the words following, to wit:

And the court, having heard argument upon said motion and being sufficiently advised, doth now overrule the same; to which ruling the defendants severally except.

And said defendants now file their motion on behalf of all and each of them in arrest of judgment herein in the words following, to wit:

And the court, having heard argument thereon and being sufficiently advised, doth now sustain the same as to the 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32d, 33d, 34th, 35th, and 36th counts of said indictment, and doth overrule the same as to the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st,
41 42d, 43d, 44th, 45th, and 46th counts of said indictment; to which last ruling of the court the defendants now severally except, and the court doth now allow said defendants one hundred (100) days from this date to file their bill of exceptions.

And the court doth now find, upon the verdict of the jury heretofore rendered herein, that said defendants, Francis A. Coffin and Percival B. Coffin, are guilty as charged in said 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert S. Reed, is guilty as charged in said 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and the defendants having been severally inquired of what they had to say why the sentence of the law should not be pronounced on the verdict of the jury, each severally answered, "Nothing."

It is therefore considered and adjudged by the court that said defendants, Francis A. Coffin and Percival B. Coffin, are each guilty as charged in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert, S. Reed, is guilty as charged in the 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and it is further considered by the court that said defendant, Francis A. Coffin, for the offense so charged, be imprisoned and confined in the Northern prison of the State of Indiana for the term of ten (10) years, and that he do pay unto the United States the costs of this

prosecution, taxed at $—; and it is further considered by the court that said defendant, Percival B. Coffin, for the offense so charged, be imprisoned and confined in the Northern prison of the State
42 of Indiana for the term of five (5) years, and — unto the United States the costs of this prosecution, taxed at $—.

And the court doth now suspend sentence and judgment as to the defendant Albert S. Reed during his good behavior, and said Albert S. Reed is required to enter into his personal recognizance in the sum of $1,000 for his appearance; and said defendant, Albert S. Reed, now in open court acknowledges himself to owe and be indebted unto the United States in the penal sum of one thousand dollars, to be levied of his goods and chattels, lands and tenements, if default be made in condition following—that is to say, that he be and appear in this court from day to day of the present term thereof and from term to term thereafter to answer unto the United States upon the charge against him, and not depart without its leave.

43 And afterwards, to wit, at the November term of said court, on the 18th day of April, 1895, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and presents to the court the mandate of the Supreme Court commanding further proceedings in conformity with its opinion and judgment reversing the judgment of this court, and it is ordered that said mandate be filed and spread upon the records, which is done accordingly in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judge of the district court of the United States for the district of Indiana, Greeting:

Whereas lately, in the district court of the United States for the district of Indiana, before you, in a cause between The United States, plaintiff, and Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, defendants, wherein the judgment of the said district court entered in said cause is in the following words, viz:

"And the court, having heard argument thereon and being sufficiently advised, doth now sustain the same as to the 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32d, 33d, 34th, 35th, and 36th counts of said indictment and doth overrule the same as to the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; to
44 which last ruling of the court the defendants now severally except, and the court doth now allow said defendants one hundred (100) days from this date to file their bill of exceptions.

And the court doth now find, upon the verdict of the jury heretofore rendered herein, that said defendants, Francis A. Coffin and Percival B. Coffin, are guilty as charged in said 1st, 2d, 3d, 4th,

5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert S. Reed, is guilty as charged in said 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and the defendants, having been severally inquired of what they had to say why the sentence of the law should not be pronounced on the verdict of the jury, each severally answered, 'Nothing.'

It is therefore considered and adjudged by the court that said defendants, Francis A. Coffin and Percival B. Coffin, are each guilty as charged in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert S. Reed, is guilty as charged in the 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and it is further considered by the court that said defendant, Francis A. Coffin, for the offense so charged, be imprisoned and confined in the Northern prison of the State of Indiana for the term of ten (10) years, and that he do pay unto the United States the costs of this prosecution, taxed at $—; and it is further considered by
45 the court that said defendant, Percival B. Coffin, for the offense so charged, be imprisoned and confined in the Northern prison of the State of Indiana for the term of five (5) years, and that he do pay unto the United States the costs of this prosecution, taxed at $—.

And the court doth now suspend sentence and judgment as to the defendant Albert S. Reed during his good behavior, and said Albert S. Reed is required to enter into his personal recognizance in the sum of $1,000 for his appearance, and said defendant, Albert S. Reed, now in open court acknowledges to owe and be indebted unto the United States in the penal sum of one thousand dollars, to be levied of his goods and chattels, lands and tenements, if default be made in condition following—that is to say, that he be and appear in this court from day to day of the present term thereof and from term to term thereafter to answer unto the United States upon the charge against him, and not depart without its leave."

As by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of a writ of error sued out by Francis A. Coffin and Percival B. Coffin agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel:

On consideration whereof it is now here ordered and ad-
46 judged by this court that the judgment of the said district court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court, with directions to grant a new trial.

MARCH 4, 1895.

You, therefore, are hereby commanded that such further proceedings be had in said cause in conformity with the opinion and judgment of this court as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

And upon consideration thereof it is ordered by the court that a new trial be, and the same is hereby, granted the defendants, Francis A. Coffin and Percival B. Coffin, upon the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 counts of the indictment, and it is further ordered that said defendants be and appear before this court on or before the 1st day of May, 1895, and submit to such orders as may be made by the court herein.

And afterwards, to wit, at the November term of said court, on the 1st day of May, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

47 Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Percival B. Coffin in person and by W. H. H. Miller, Esq., his attorney, also comes, and with said defendant come also Hannah H. Swift, Joseph R. Perry, and John Roberts, his sureties, and, being thereunto required by the court, said defendant, Percival B. Coffin, and his sureties, Hannah H. Swift, Joseph R. Perry, and John Roberts, now in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Percival B. Coffin, be and appear in this court on the first day of the next ensuing May term of this court and from day to day of said term and from term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And now, upon motion of the attorney of the United States, the defendant Francis A. Coffin and his sureties, Hannah H. Swift, John Roberts, William E. Kurtz, and William E. Coffin, are each three times called and come not, but wholly make default.

It is therefore considered by the court that said recognizance be, and the same is hereby, forfeited unto the United States.

And now it is ordered by the court that the above-entitled cause be, and the same is hereby, set down for trial on May 28th, 1895.

And afterwards, to wit, at the May term of said court, on the 13th day of May, 1895, before the Honorable John H. Baker, judge

of said court, the following further proceedings in the above-entitled cause were had, to wit:

48 It being shown to the court that there are no moneys available for the payment of witnesses for the United States and other expenses incident to the trial of the above-entitled case, and that none will be available for such purposes until after the close of the present fiscal year, it is now therefore ordered by the court that said case be, and the same is hereby, set for trial on the 10th day of September, 1895, and that the previous order of this court setting the same for trial on the 28th day of May be, and the same is hereby, rescinded.

And afterwards, to wit, at the May term of said court, on the 1st day of June, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Francis A. Coffin in person and by counsel also comes, and now, upon motion of said defendant, it is ordered by the court that the default and forfeiture of recognizance entered herein on the 1st day of May, 1895, against said defendant, Francis A. Coffin, be, and the same is hereby, set aside.

And now, with said defendant, Francis A. Coffin, come also Hannah H. Swift and John Roberts, his sureties, and, being thereunto required by the court, said defendant, Francis A. Coffin, and his sureties, Hannah H. Swift and John Roberts, now in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant,

49 Francis A. Coffin, be and appear in this court on the 10th day of September, 1895, and from day to day of said term and from term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And afterwards, to wit, at the May term of said court, on the 9th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by counsel, and file their affidavit and motion for a continuance of this cause; which motion and affidavit are in the words following, to wit:

See motion and affidavit set out in the bill of exceptions on page 50.

50 And afterwards, to wit, at the May term of said court, on the 10th day of September, 1895, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States,

and come also the defendants Francis A. Coffin and Percival B. Coffin in person and by Miller, Winter & Elam, their attorneys, and thereupon the court, having heard the argument of counsel and being sufficiently advised in the premises, doth now overrule the motion and affidavits of said defendants for a continuance of this cause; to which ruling of the court said defendants, by their attorneys, now except and file their bill of exceptions herein in the words following, to wit:

Be it remembered that on Monday, the 9th day of September, 1895, the defendants in the above-entitled cause moved the said district court of the United States for the district of Indiana to grant them a continuance in said cause on account of their inability to procure the attendance of George B. Stoddard and C. H. Tyler, witnesses, and filed their affidavits in support of said motion; which motion and affidavit are in the words and figures following, to wit:

51 District Court of the United States for the District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN and PERCIVAL B. COFFIN. } Affidavit for Continuance.

Francis A. Coffin and Percival B. Coffin, being duly sworn, on oath say that they are the defendants in the above-entitled cause, and that they cannot safely go to trial of the same at the time the same is now set for trial in this court, to wit, on the tenth day of September, 1895, because of their inability to procure the attendance and testimony as witnesses in their behalf upon the trial of said cause, if such trial shall be entered upon at said time, of George B. Stoddard and C. H. Tyler or either of them, who are material and competent witnesses for these defendants upon the trial of said cause; that said witnesses respectively will testify upon the trial of said cause as follows:

The said George B. Stoddard, that he is now and has been for about twenty-five years last past a resident of the city of Chicago; that he is now engaged in the furniture brokerage business in said city; that he has been connected with the furniture business in different ways for about twenty years; that he has acted for a number of furniture houses and dealers as a salesman; that for about three years—from 1886 to 1889, inclusive—he was connected with the Indianapolis Cabinet Company as salesman; that for three years he was the manager of the Kankakee Furniture Company of Kankakee, Illinois; that he organized the company, built its
52 plant and had charge of the same during said period; that in his business as a furniture broker and while acting as salesman for the Indianapolis Cabinet Company and as manager of the Kankakee Furniture Company during a period of fifteen years he had handled the line of desks manufactured by the Indianapolis Cabinet Company, and had become well acquainted with the character of said goods and the standing and estimation in which they

were held by other manufacturers of and dealers in furniture and by the furniture trade generally in the United States; that he was well acquainted with the values of furniture and desk stock such as were manufactured and handled by the Indianapolis Cabinet Company and all supplies used in such manufacture; that there had been exhibited to him by the defendants in this case in May, 1894, a detailed inventory and valuation of the supplies owned by and in the possession of the Indianapolis Cabinet Company at its place of business in the city of Indianapolis on the 1st day of July, 1893, the aggregate of which valuation, as shown in said inventory, was $29,765.40; also of the finished stock owned — and in the possession of said Indianapolis Cabinet Company at its place of business in the city of Indianapolis on the 1st day of July, 1893, the aggregate valuation of which, as shown in such inventory, was $51,928.15; also of the stock in process of manufacture owned by and in the possession of said Indianapolis Cabinet Company at its place of business in the city of Indianapolis on the 1st day of July, 1893, contained in the cabinet and machine rooms of said company, the aggregate valuation of which in the cabinet-room was $37,489.72 and in the machine-room *of* $23,204.05; also of the whitewood and veneer owned by and in the possession of said Indianapolis Cabinet Company at its plant in the city of Indianapolis on the 1st day of July,
53 1893, the aggregate valuation of which was $11,380.26; also of the patterns, forms, drawings, dimension bills and rods owned by and in the possession of said Indianapolis Cabinet Company in the city of Indianapolis on the 1st day of July, 1893, the aggregate valuation of which was $3,915; also of the lumber owned by and in the possession of said Indianapolis Cabinet Company in the yard and sheds and kilns of said company in the city of Indianapolis on the 1st day of July, 1893, the aggregate valuation of which was $37,162.40; also of the logs owned by and in the possession of said company in the city of Indianapolis on the 1st day of July, 1893, the aggregate valuation of which was $4,068.19; also of the additions which had been made to the various kinds of property included in the aforesaid inventories from the 1st day of July, 1893, to the 1st day of August, 1893, the aggregate valuation of which was $2,138.48, the total valuation of all said property so owned and possessed by said company on the 1st day of July, 1893, with the additions thereto to the first day of August, 1893, being, as shown in said inventories, $201,034.65, which said inventories so exhibited to and examined by said Stoddard were marked respectively A, B, C, D, E, F, G, H, and I and are the same inventories, so marked, which are now in the possession of the defendants in this cause and which were given in evidence upon the former trial and marked Exhibit No. 159; that he, upon said inventories being exhibited to him at the time aforesaid, had carefully examined the same in detail, both in reference to the description and character and kind of property specified therein and as to the valuation put upon the various articles of property in said inventory with the view of determining whether or not such valuations were the reasonable and

fair market values of such property on said 1st days of July
54 and August, 1893, and that the values stated in said inventories and the aggregate of said values as therein stated, to wit, the sum of $201,034.65, was the fair and reasonable market value of said property on said first days of July and August, 1893, assuming said property to have been in good, merchantable condition; that said Stoddard will further testify that the line of goods manufactured by said Indianapolis Cabinet Company was the leading and largest line of that kind of goods in the trade in the United States and had the highest and best reputation of such lines of goods in the trade generally in the United States, and that the good will of said Indianapolis Cabinet Company by reason of the estimation in which its goods were held and of its large business was worth on the first day of July, 1893, fifty thousand dollars.

Said C. H. Tyler will testify that he is and has been a resident of the city of St. Louis for about forty-one years; that he is now retired from business, but that for fifteen years continuously immediately preceding November, 1892, he had been engaged in the desk business on his own account, handling and dealing in desks, doing a large business, for the last 9 or 10 years of which time he had handled and dealt very largely in the desks manufactured by the Indianapolis Cabinet Company, purchasing said desks from said company; that during said time he had often visited and been in and about the works of said company, in the city of Indianapolis; that in the month of May, 1894, there had been exhibited to him an inventory purporting to have been taken by the Indianapolis Cabinet Company on the 1st day of July, 1893, of the supplies, finished stock, stock in process of manufacture in the cabinet and machine rooms, stock of whitewood and veneers, patterns and forms, drawings, dimension bills and rods, lumber in yard, sheds and kilns,
and logs owned by the Indianapolis Cabinet Company and
55 in its possession at its plant, in the city of Indianapolis, on the 1st day of July, 1893, with valuations set opposite the respective articles therein described, and a summary and aggregation of such values, and also of the additions which had been made to said property between the first day of July, 1893, and the first day of August, 1893, with a like valuation thereof; that said inventories respectively were marked A, B, C, D, E, F, G, H, and I and are the same inventories, so marked, which are now in the possession of these defendants and which upon the former trial of this cause were given in evidence and marked Exhibit No. 159; that upon said inventories being exhibited to him he made a careful and detailed examination of the same with a view to ascertain the description and character of property contained therein, going over the same five different times, and of determining whether the valuations stated therein of such articles of property were the fair and reasonable values thereof on the first days of July and August, 1893, and that the valuation so placed upon said property in said inventories and the aggregate valuation of each class of property, except of the patterns and forms, drawings, dimension bills and rods contained

in inventory marked F, such valuation of each class being as follows:

Supplies, inventory marked A, $29,765.40; finished stock, inventory marked B, $51,928.15; stock in process of manufacture in cabinet and machine rooms, inventories marked C and D, $60,693.77; whitewood and veneers and fancy veneers, inventory marked E, $11,380.26; lumber, inventories marked G and I, $37,162.40; logs, inventory marked H, $4,068.19; additions from July 1st to August 1st, 1893, inventory marked K, $2,138.48, being a total of $197,119.65, was the fair and reasonable market value of said
56 property on the 1st days of July and August, 1893, assuming the same to have been in good, merchantable condition.

Said Tyler will further testify in reference to the patterns, forms, drawings, dimension bills and rods specified in said inventory marked F that articles such as described in said inventory are indispensable to the successful operation of a business such as that in which the Indianapolis Cabinet Company were engaged; that the procuring and manufacture of the same requires skill of a high order and the expenditure of large sums of money; that while he is not able to set any money value upon the same, yet that they were of great value to such a business as that of the Indianapolis Cabinet Company. He will further testify that desks cannot be manufactured without patterns and drawings such as those described in said inventory; that dimension bills and rods such as are described in said inventory are stock cut out upon which the dimensions of each part of which a desk is composed are marked so that by means thereof a workman can make and bring out a desk precisely like the pattern without having seen the desk; that the various pieces of which a desk is composed go through a number of different machines before they are brought to the finished condition required when they are put into the completed desk, and that the dimensions of each piece are changed and reduced by each machine through which it goes in the process of manufacture, and that by reason thereof different dimension rods and bills are required to show the dimensions of each piece which enters into the completed desk as it leaves each machine through which it is required to pass, and that a first-class desk factory and business cannot exist without having on hand
57 dimension rods and bills, patterns, and drawings for all stages of the manufacture in which they are engaged. Said Tyler will further testify that the Indianapolis Cabinet Company, on the 1st day of July, 1893, and during all of the time prior thereto he had been dealing with said company, had been doing a large business in the manufacture and sale of desks, its trade extending throughout the United States; that the goods manufactured by them were of superior quality and enjoyed the highest reputation among dealers generally, and that by reason of these facts the good will belonging to said Indianapolis Cabinet Company was worth on the 1st day of July, 1893, from forty to fifty thousand dollars; that he had himself twice attempted to buy stock in the company in the year 1891 or 1892.

Affiants further say that the facts to which said witnesses respectively will testify are true; that the same are material to their defence in this cause; that they are unable to prove said facts by any other witness whose testimony can be as readily procured; that the said inventories which were so examined by said witnesses were taken by the Indianapolis Cabinet Company at the time they bear date, in the ordinary course of business, and that all the property embraced therein was owned and in the possession of said company at its plant in the city of Indianapolis when said inventories were taken and at the time the transactions mentioned in the indictment occurred and were in good merchantable condition, which defendants will be able to prove on the trial by other witnesses; that the absence of said witnesses or either of them has not been procured by the act or connivance of these defendants or either of them, nor by others at the request of them or either of them, nor with the knowledge or consent of them or either of them,
58 but is solely due to the fact that each of said witnesses is at this time sick and by reason thereof unable to attend and testify upon the trial of this cause at the time it is now set for trial, as shown as to said Stoddard by the affidavit of Gerald O. Edmunds, his physician, which is hereto attached, marked Exhibit A, and as to said Tyler by the affidavit of his physician, E. A Griveaud, which is hereto attached, marked Exhibit B.. Affiants further state that said Stoddard resides in the city of Chicago, in the State of Illinois, and said Tyler in the city of St. Louis, in the State of Missouri; that affiants caused subpœnas to be issued out of this court for the attendance of said witnesses upon the trial of this cause, directed to the marshal of the United States for the northern district of Illinois and the eastern district of Missouri respectively, and the same to be served upon said Stoddard and Tyler by said marshals, which was done as to said Stoddard on the 4th day of September, 1895, and as to said Tyler on the 4th day of September, 1895, and at the same time caused to be tendered to said witnesses their fees and mileage for attendance upon the trial of this case, as is shown by said subpœnas, with the returns of the marshals indorsed thereon, which are attached hereto as Exhibits C and D; that said witnesses resided in said cities of Chicago and St. Louis respectively at the time of the former trial of this cause and attended personally upon said trial and testified as witnesses for these defendants substantially to the facts as hereinbefore stated; that they agreed and promised to attend personally as witnesses upon the second trial of this cause,
59 and affiants believe that they would have so attended had it not been for their sickness, as shown in the affidavits of their said physicians, and had no knowledge that their personal attendance and testimony could not be procured until after issuing subpœnas for them, as hereinbefore stated; that the disability of said witnesses to attend is not permanent, and that the personal attendance and testimony of said witnesses can be obtained if this cause shall be continued for a period of two months or until the November term, 1895.

And they therefore ask that said cause be continued for said period of two months or until the November term of the court.

Witness our hands this 9th day of September, 1895.

FRANCIS A. COFFIN.
PERCIVAL B. COFFIN.

STATE OF INDIANA, *Marion County,* } ss:

Subscribed and sworn to before me, a notary public in and for said county and State, this 9th day of September, 1895.

H. W. PHILLIPS,
Notary Public.

[SEAL.]

EXHIBIT "A."

STATE OF ILLINOIS, *County of Cook,* } ss:

In the United States Court of Indianapolis, Indiana.

UNITED STATES
vs.
F. A. and P. B. COFFIN.

60 STATE OF ILLINOIS, *County of Cook,* } ss:

Gerald O. Edmunds, being duly sworn according to law, upon his oath deposes and says:

I am a practicing physician, with office at 420 Webster Ave., in the city of Chicago, county of Cook and State of Illinois.

On the 4th day of September, 1895, I made a professional examination of George B. Stoddard, who had been subpœnaed to appear before the United States court at Indianapolis, Indiana, on the 17th day of September, 1895, and there give testimony in the case of The United States *vs.* F. A. and P. B. Coffin.

I find that the said George B. Stoddard is in an advanced stage of diabetes, complicated by Bright's disease, and physically unfit to perform any such service, and, as his physician, I forbid him to undertake any such trip during the period of at least two months following this date, as such exertion and excitement might bring about a fatal result to his present illness.

GERALD O. EDMUNDS, M. D.

Subscribed and sworn to before me this 5th day of Sept., 1895.

[SEAL.]

D. ROBERTSON,
Notary Public.

STATE OF ILLINOIS, *Cook County,* } ss:

I, Philip Knope, clerk of the county court of Cook county, the same being a court of record, do hereby certify that D. Robertson, Esq., whose name is subscribed to the annexed jurat, was at the time of signing the same a notary public in Cook county, duly com-

missioned, sworn, and acting as such, and authorized to administer oaths; that I am well acquainted with the handwriting of
61 said notary, and I verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in the said county, this 5th day of Sept., 1895.

[SEAL.] PHILIP KNOPF, *Clerk.*

EXHIBIT "B."

ST. LOUIS, *Sept. 6th*, 1895.

To whom it may concern:

This will certify that I have made a careful examination of Capt. C. H. Tyler, whom I have known for more than twenty-five (25) years and treated for injuries to the spine received in the Ashtabula R. R. accident, in 1875, from which he has never fully recovered, in consequence of which he is unable to sit in a close room in warm weather containing many people because the effects of crowd prison produces intense mental and physical suffering; hence it would not be safe for him to perform the duties required of him before the lat-er part of October or beginning of November.

Respectfully, E. A. GRIVEAUD.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Subscribed and sworn to before me this 6th day of September, 1895. I further certify that the affiant is a practicing physician in good standing, and that I have no interest in the above.

[SEAL.] THOS. B. RODGERS,
Clerk of the Circuit Court, City of St. Louis, State of Missouri.

62 EXHIBIT "C."

The President of the United States of America to the marshal of the northern district of Illinois, Greeting:

You are hereby commanded to summon Marshall D. Talcott, publisher of the Furniture Blue Book of Chicago, and George B. Stoddard, furniture broker of Chicago, if they may be found in your district, to be and appear before the district court of the United States for the district of Indiana, at Indianapolis, on the 17th day of September, 1895, at 9 o'clock a. m., then and there to testify in a certain suit now pending in said court, wherein The United States is plaintiff and Francis A. Coffin *et al.* are defendants; and this they will not omit under the penalty of one hundred dollars; and have you then and there this writ.

This writ issued at the instance of the defendants.

Witness Honorable John H. Baker, judge of said court, and the

seal of said court hereto affixed, at Indianapolis, this 2d day of September, 1895.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

(On the back.)

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

I have served this writ by reading the same to and within the presence and hearing of Marshall D. Talcott and George B. Stoddard within named on the 4th day of September, A. D. 1895. I also tendered to George B. Stoddard twenty-one dollars ($21) as witness fees and mileage.

Fees.

2 services	1 00
2 miles	12
1 return	10
	$1 22

J. W. ARNOLD,
U. S. Marshal.
GEO. N. JONES, *Deputy.*

63 Chicago. No. 1060, No. 4926. United States district court, district of Indiana, May term, 1895. U. S. *vs.* Francis A. Coffin *et al.* Subpœna. Miller, Winter & Elam.

EXHIBIT "D."

The President of the United States of America to the marshal of the eastern district of Missouri, Greeting:

You are hereby commanded to summon Capt. C. H. Tyler, No. 4006 Lindell Boulevard, St. Louis, if *they* may be found in your district, to be and appear before the district court of the United States for the district of Indiana, at Indianapolis, on the 17th day of September, 1895, at 9 o'clock a. m., then and there to testify in a certain suit now pending in said court, wherein The United States is plaintiff and Francis A. Coffin *et al.* are defendants; and this *they* will not omit under the penalty of one hundred dollars; and have you then and there this writ.

This writ issued at the instance of the defendants.

Witness Honorable John H. Baker, judge of said court, and the seal of said court hereto affixed, at Indianapolis, this 2d day of September, 1895.

[Seal of the District Court of the United States.]

NOBLE C. BUTLER, *Clerk.*

(On the back.)

UNITED STATES OF AMERICA,
Eastern District of Mo.

ST. LOUIS, *Sept. 4th*, 1895.

64 I certify that I executed this writ, at the city of St. Louis, on the 4th day of September, 1895, by reading the same to and in the presence and hearing of the within-named Capt. C. H. Tyler and by fully making known the contents thereof to him, and that I also tendered and paid to the said Capt. C. H. Tyler the sum of $29.00, the same being his mileage both ways from his residence to Indianapolis, Ind., and return and one day's attendance, as more fully appears from his receipt hereto affixed.

J. E. LYNCH,
United States Marshal, Eastern Dist. Mo.,
By W. W. NALL, *Deputy.*

Service & mileage, .88, paid.

St. Louis. No. 4926. United States district court, district of Indiana, May term, 1895. U. S. *vs.* Francis A. Coffin *et al.* Subpœna. Miller, Winter & Elam.

ST. LOUIS, *Sept. 4th*, 1895.

I certify that I have received of J. E. Lynch, marshal of the United States for the eastern district of Missouri, the sum of twenty-nine dollars, the same being mileage both ways from my residence at St. Louis to Indianapolis and one day's attendance upon the court herein designated.

C. H. TYLER.

65 And be it further remembered that hereafter, on the 10th day of September, 1895, the court having heard argument upon and considered said motion, overruled the same; to which ruling of the court the defendant at the time excepted and presented this their bill of exceptions and prayed the court to sign and seal the same, in order that said matter might become a part of the record in this cause, which is now accordingly done this 10th day of September, 1895.

JOHN H. BAKER,
Judge District Court U. S., District of Indiana.

And now said defendants, by their attorneys, move the court for leave to withdraw their plea of not guilty heretofore entered herein and demur to the indictment herein, and the court, having heard the argument of counsel and being sufficiently advised in the premises, doth now overrule said motion; to which ruling of the court the defendants, by their attorneys, now except, and are granted leave to file their bill of exceptions herein within twenty days.

66 And afterwards, to wit, at the May term of said court, on the 11th day of September, 1895, before the Honorable John

H. Baker, judge, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and come also the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, and, this cause coming on to be tried here, comes a jury, to wit, Frank Griffin, Louis J. Hickman, George Short, James Bond, Solomon Carter, George W. Ely, Allen W. Galyean, Erastus P. McClure, William H. Risk, Oliver M. Boyd, Smith R. Davis, and Ora F. Martin, who, being duly impanneled and sworn, are now by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 12th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by their attorneys also come, and the jury heretofore impanneled and sworn herein also come, and, having heard the opening statement of counsel and partially heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

67 And afterwards, to wit, at the May term of said court, on the 13th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter and Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 14th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence in this cause, are by the court allowed to separate until the calling of this cause on next Tuesday morning, the 17th instant.

And now, upon motion of the defendants, by their attorneys, the plaintiff is required by the court to make its election of the acts of the defendants which are prosecuted by it under counts 13, 14, 15, and 16 of the indictment.

And afterwards, to wit, at the May term of said court, on
68 the 17th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on next Thursday morning, the 19th instant.

And now the plaintiff, by its attorneys, files notice of its election of acts of the defendants which are prosecuted by it under counts 13, 14, 15, and 16 of the indictment; which notice is in the words following, to wit:

The plaintiff elects by the United States attorney to prosecute defendants under count 13, the transaction occurring on the 23 day of May, 1893.

Under count 14, the transaction occurring on June 29, 1893.

Under count 15, the transaction occurring on March 11th, 1893.

Under count 16, the transaction occurring on May 31st, 1893.

F. B. BURKE, *U. S. Att'y.*
JOHN W. KERN.
EDWIN CORR,
Ass't U. S. Attorney.

And afterwards, to wit, at the May term of said court, on
69 the 19th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 20th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States,

and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 21st day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States,
and John W. Kern, Esq., special assistant to the attorney for
70 the United States, and the defendants, Francis A. Coffin and
Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on Monday morning next.

And afterwards, to wit, at the May term of said court, on the 23d day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 24th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the evidence herein, are by the
court allowed to separate until the calling of this cause on to-
71 morrow morning.

And afterwards, to wit, at the May term of said court, on the 25th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 26th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impannelled and sworn herein also comes, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 27th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

72 Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having heard the residue of the evidence and a part of the argument herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And the defendants, by their said attorneys, now file their request to the court to give to the jury certain instructions in the words following, to wit:

See request set out in bill of exceptions on page 104.

73 And afterwards, to wit, at the May term of said court, on the 28th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the argument herein, are by the court allowed to separate until the calling of this cause on Monday morning next.

And afterwards, to wit, at the May term of said court, on the 30th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the argument herein, are by the court allowed to separate until the calling of this cause on to-morrow morning.

And afterwards, to wit, at the May term of said court, on the 1st day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

74 Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by their attorneys, Miller, Winter & Elam, also comes, and the jury heretofore impanneled and sworn herein also comes, and, having heard the residue of the argument herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 2d day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impaneled and sworn herein also comes, and, having heard the instructions of the court, now retire to their room to consider of their verdict herein, and defendants except to refusal to give instructions requested by them herein.

And the defendants, by their said attorneys, now except to certain portions of the instructions of the court to the jury herein, and are allowed by the court sixty days within which to file a bill of exceptions.

See instructions set out in bill of exceptions on page 159.

75 And afterwards, to wit, at the May term of said court, on the 3rd day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival

B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and now returns into court the verdict following:

We, the jury, find the defendant Francis A. Coffin guilty as charged in the indictment on counts 4, 9, 11, 12, 13, 14, and 39, and the defendant Percival B. Coffin not guilty.

O. M. BOYD, *Foreman.*

It is therefore considered by the court that said defendant, Percival B. Coffin, as to said indictment do go hence thereof without day.

And afterwards, to wit, at the May term of said court, on the 4th day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant Francis A. Coffin, by Miller, Winter & Elam, his attorneys, and files his exceptions to the instructions of the court to the jury in the words following, to wit:

See bill of exceptions, page 181.

76 And afterwards, to wit, at the May term of said court, on the 5th day of October, 1895, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendant Francis A. Coffin, in person and by Miller, Winter & Elam, his attorneys, also comes and files his motion for a new trial herein in the words following, to wit:

(See motion set out in bill of exceptions, page 201.)

And the court, having heard the argument of counsel and being sufficiently advised, doth now overrule said motion for a new trial; to which ruling of the court the defendant, by his attorneys, now excepts.

And thereupon said defendant, by his attorneys, files his motion in arrest of judgment herein in the words following, to wit:

District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN *et al.* } No. 4926. Motion in Arrest of Judgment.

The defendant Francis A. Coffin moves the court to arrest the judgment in this case, because neither of the counts upon which this defendant was found guilty by the jury, to wit, neither the fourth, the ninth, the eleventh, the twelfth, the thirteenth, the fourteenth, or the thirty-ninth count of the indictment, states facts sufficient to constitute a crime under the statute of the United States.

MILLER, WINTER & ELAM,
Att'ys for Def't.

And afterwards, to wit, at the May term of said court, on the 30th day of September, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and, having further heard the argument herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 1st day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

74 Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by their attorneys, Miller, Winter & Elam, also comes, and the jury heretofore impanneled and sworn herein also comes, and, having heard the residue of the argument herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 2d day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impaneled and sworn herein also comes, and, having heard the instructions of the court, now retire to their room to consider of their verdict herein, and defendants except to refusal to give instructions requested by them herein.

And the defendants, by their said attorneys, now except to certain portions of the instructions of the court to the jury herein, and are allowed by the court sixty days within which to file a bill of exceptions.

See instructions set out in bill of exceptions on page 159.

75 And afterwards, to wit, at the May term of said court, on the 3rd day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, Francis A. Coffin and Percival

B. Coffin, in person and by Miller, Winter & Elam, their attorneys, also come, and the jury heretofore impanneled and sworn herein also comes, and now returns into court the verdict following:

We, the jury, find the defendant Francis A. Coffin guilty as charged in the indictment on counts 4, 9, 11, 12, 13, 14, and 39, and the defendant Percival B. Coffin not guilty.

O. M. BOYD, *Foreman.*

It is therefore considered by the court that said defendant, Percival B. Coffin, as to said indictment do go hence thereof without day.

And afterwards, to wit, at the May term of said court, on the 4th day of October, 1895, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant Francis A. Coffin, by Miller, Winter & Elam, his attorneys, and files his exceptions to the instructions of the court to the jury in the words following, to wit:

See bill of exceptions, page 181.

76 And afterwards, to wit, at the May term of said court, on the 5th day of October, 1895, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendant Francis A. Coffin, in person and by Miller, Winter & Elam, his attorneys, also comes and files his motion for a new trial herein in the words following, to wit:

(See motion set out in bill of exceptions, page 201.)

And the court, having heard the argument of counsel and being sufficiently advised, doth now overrule said motion for a new trial; to which ruling of the court the defendant, by his attorneys, now excepts.

And thereupon said defendant, by his attorneys, files his motion in arrest of judgment herein in the words following, to wit:

District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN *et al.* } No. 4926. Motion in Arrest of Judgment.

The defendant Francis A. Coffin moves the court to arrest the judgment in this case, because neither of the counts upon which this defendant was found guilty by the jury, to wit, neither the fourth, the ninth, the eleventh, the twelfth, the thirteenth, the fourteenth, or the thirty-ninth count of the indictment, states facts sufficient to constitute a crime under the statute of the United States.

MILLER, WINTER & ELAM,
Att'ys for Def't.

And the court, having heard the argument of counsel and being sufficiently advised, doth now overrule said motion in arrest of judgment; to which ruling of the court the defendant, by his attorneys, now excepts.

And afterwards, to wit, at the May term of said court, on the 22d day of October, 1895, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant Francis A. Coffin, by Messrs. Miller, Winter & Elam, his attorneys, and files his bill of exceptions herein in the words following, to wit:

77 District Court of the United States, District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN. } No. 4926. Bill of Exceptions.

Be it remembered that on the trial of this cause the Government of the United States presented evidence to the jury tending to show that the Indianapolis National bank, named in the indictment, was and is a corporation duly organized under the laws of the United States providing for a national currency and for the organization and management of national banks; that the Indianapolis Cabinet Company was and is a corporation organized under the laws of the State of Indiana providing for the creation of manufacturing and mining companies; that Theodore P. Haughey, from its organization, in 1864, to the time of its suspension, in 1893, on the 25th day of July in said year, was the president of said Indianapolis National bank, and for the last ten years was practically the sole manager of its affairs and business; that the said Indianapolis National bank at the time of its suspension was very largely insolvent, its assets, its capital stock being $300,000, being largely inadequate to the payment of its debts; that said bank, by the mismanagement and wrongful loans and unauthorized use of the moneys of said bank by said president, had at the time of its suspension accumulated a very large amount of notes, bills of exchange, and other assets of doubtful value or entirely worthless; that its good assets, exclusive of $375,000 of Government bonds to secure circulation and Government deposits to an equal amount, were $504,000; its
78 doubtful assets, including $225,000 of the debt of the Indianapolis Cabinet Company, were $572,000, and its worthless assets, including $150,000 of the Indianapolis Cabinet Company paper, were $698,000, and its liabilities, exclusive of circulation and Government deposits, were $1,661,000; that of said indebtedness to said bank at the date of its failure the Indianapolis Cabinet Company was owing primarily or as endorser of paper discounted $375,000; that on the 7th day of August, 1893, said Indianapolis Cabinet Company stopped business and was placed in the hands of a receiver for the purpose of winding up its business by decree of the circuit

court of Marion county, Indiana, said proceeding being still pending; that at said date and at the date of the failure of said bank, on July 25th, 1893, it was claimed by the Government, and there was evidence tending so to prove, that said Indianapolis Cabinet Company was insolvent and that its assets were worth only $176,000, and that at the sale by the receiver of the plant and tangible property connected therewith, in October, 1894, the same realized only $76,000, though it was claimed on behalf of the defendant Francis A. Coffin, who was an officer of said Indianapolis Cabinet Company and had been such during all the period covered by the indictment, that the assets of said corporation were of a value of over $525,000, and that at the date of each transaction named in the indictment such assets were adequate to the payment of its debts, and there was evidence tending so to prove.

Be it further remembered that it was admitted in said cause that the defendant Francis A. Coffin had been connected with said Indianapolis Cabinet Company, as one of its officers and a director, from its organization, in 1880, and for several years last past had been its president and controlling officer.

79 And be it further remembered that evidence was introduced on behalf of the Government tending to prove that from time to time during the last five years preceding the failure of the bank the defendant Francis A. Coffin had caused to be organized a number of other corporations, to wit, the United States Office Furniture Company, the Indianapolis Office Furniture Company, the Indianapolis Veneer and Panel Company, the Indiana Cabinet Company, the Indianapolis Desk Company, and the Wooten Office Desk Company, and had obtained control of the Indianapolis Plow Company, and had caused indebtedness incurred to the Indianapolis National bank by said Indianapolis Cabinet Company to be evidenced or renewed and extended by acceptances, notes, drafts, and bills of exchange executed by said companies, several of said corporations having no assets, others of the same having assets largely disproportionate to the amount of said indebtedness so evidenced, by means of which said Indianapolis Cabinet Company had procured the moneys, funds, and credits of said bank to like amounts, which had been procured from said bank to its own use, to be evidenced by the paper of said corporations, upon which it appeared to be only secondarily liable; that it was claimed on behalf of the Government, and its evidence tended to prove, that said corporations were organized and operated with a view to enabling the said Indianapolis Cabinet Company to procure in their names a larger credit in said Indianapolis National bank and to evade the law forbidding money exceeding ten per cent. of the capital stock of the bank to be loaned to any one person, the said several corporations being under the absolute control of the said defendant as the executive officer and director of said Indianapolis Cabinet Company. On the other hand, the defendant Francis A. Coffin claimed, and introduced evidence tending to show, that said corporations were organized and carried on for the purpose of facilitating the business of manufacturing and selling desks under the general con-

trol of the Indianapolis Cabinet Company, some of them
80 being organized for the purpose of preventing the use of names so near like that of the Indianapolis Cabinet Company as to interfere with the use of the latter; others, as the Indianapolis Desk Company, for the purpose of purchasing and selling the goods of the Indianapolis Cabinet Company and other parties in London; the Indiana Cabinet Company, for like purpose in Boston; the Indianapolis Office Furniture Company, for like purpose in New York, and the United States Office Furniture Company, for the purpose of handling a cheaper grade of desks than that sold under the name of the Indianapolis Cabinet Company.

There was evidence tending to prove that said companies executed acceptances, drafts, bills of exchange on one another, which were discounted by the Indianapolis National bank and the proceeds thereof checked out by the Indianapolis Cabinet Company. *R*he evidence further tended to prove that the Indianapolis Cabinet Co. was not liable on a part of the paper of such corporations as maker, endorser, or acceptor.

And be it further remembered that on behalf of the Government it was claimed, and its evidence tended to show, that paper issued in the name of each of said corporations other than the Indianapolis Cabinet Company was not based upon any values, but was "sham" paper, used for the unlawful purpose of evading the law limiting the amount of loans by a national bank as aforesaid, there being evidence tending to show that this was the only purpose in so using said paper, and that, notwithstanding said law, some of said corporations, as the Indiana Cabinet Company of Boston and two or three others, at the date of the failure of said bank, were indebted to said bank in sums in excess of ten per cent. of its capital stock, as was also said Indianapolis Cabinet Company, entirely independently of the indebtedness for which it was responsible in the name of said several other corporations.

*R*here was evidence tending to show that paper issued by
81 each of said corporations other than the Indianapolis Cabinet Company was used for the unlawful purpose of obtaining money from the Indianapolis National bank by the Indianapolis Cabinet Company and for giving it credit on the books of said bank to which it was not entitled.

And be it further remembered that on behalf of the Government it was claimed, and evidence was introduced tending to show, that the defendant, during the period covered by the indictment, had, with the knowledge, consent, and by the permission of said Theodore P. Haughey, been in the constant habit of making large overdrafts on the account of said Indianapolis Cabinet Company in said bank, such overdrafts at one time amounting to nearly $13,000, and then, by an arrangement between said Haughey and said defendant, putting in to take out such overdrafts and drafts upon customers theretofore discounted by said company to said bank which had been returned unpaid and upon which said company was liable as endorser, the paper of said several corporations known by said Haughey and by said defendant not to represent actual cash

values at all adequate to the credit so given such paper so deposited and credited in many cases being held in the bank without being forwarded for collection until about the time of its maturity, when the same was replaced by other paper of like character, which was held and replaced in like manner.

And be it further remembered that the Government also introduced evidence tending to prove that all the business of said bank, as well — the giving of credits, the payment of checks, the loaning of moneys, and the keeping of the books of the bank, was, by authority of the board of directors, under the immediate control and direction of the said Theodore P. Haughey, its president; that the entry charged to be false in the 39th count of the indictment
82 was made by the direction of said Haughey as president; that in a conversation between the said Haughey and the defendant Francis A. Coffin shortly before the making of said entry there was talk by said Haughey to the effect that it was necessary that paper should be brought to the bank for the purpose of taking out the overdraft of $13,000 then existing in the account of the Indianapolis Cabinet Company and taking up certain drafts on customers and overdue discounted paper in amount of about $27,000, which had theretofore been discounted by the bank for the cabinet company and which had been returned unpaid and until then had been held in the bank as a cash item, but which were in fact only the obligations of said cabinet company as the drawer and endorser of said drafts, and were about, at the time of said conversation, to be charged to said company in its account with said bank; that there was evidence tending to show that at the time of such conversation and when said entry mentioned in the 39th count was made, said Haughey was anticipating that an examination of the bank would shortly be made by a bank examiner and desired to have such paper furnished for the purpose of enabling him by means thereof to cause the entry mentioned in said count to be made, and that such entry was made with intent on his part to deceive any officer who might be sent by the Comptroller of the Currency to make an examination of the bank, and there was evidence also tending to prove that the paper upon which the credit mentioned in said count was based was furnished by the defendant Francis A. Coffin upon said request of said Haughey and with like intent, though said defendant claimed and introduced evidence tending to prove that he knew nothing of the making of said entry or of said intent and purpose with which it was claimed to have been made, and that in none of his acts in connection therewith had he any intention to injure or defraud said bank or to deceive any agent appointed to examine the same or to aid or assist said Haughey in so doing.

83 There was evidence tending to show that the drafts and acceptances placed in the Indianapolis National bank on the 9th day of May, 1893, were not entered upon the books of the Indianapolis Cabinet Company or of any other said companies until the 7th day of August, 1893, at which time the said Indianapolis Cabinet Company made an assignment, and that a part of said paper, drawn by and upon said companies other than the Indianapolis

Cabinet Company, at no time appeared upon the books of such companies other than the Indianapolis Cabinet Company, and that some of said companies on whom drafts were drawn did not owe any sums to the respective drawers of said drafts, and that the others did not owe the sums for which the drafts on them were drawn.

There was evidence tending to prove that before the transaction mentioned in the 39th count of the indictment the books of the Indianapolis Cabinet Company showed an overdraft on the Indianapolis National bank of about $48,000, and the books of the Indianapolis National bank at said time showed an overdraft of only $13,000, and said overdraft on books of cabinet company continued to increase until the date of failure of said bank.

And be it further remembered that it was claimed by said defendant and not disputed by the Government that, as a matter of bookkeeping, said entry so charged to be false was correct, and it was further conceded by the Government that if the paper upon which said entry was based was genuine paper, representing *bona fide* value for the amount for which said credit was given or was actually discounted by the bank, then said entry was a correct and true entry, but it was claimed on behalf of the Government and evidence was by it introduced tending to show that said paper was not *bona fide* paper, representing the value for which the same was credited or any substantial value, and that said paper was not actually discounted by said bank or actually
84 received as a genuine deposit, but was only received as a memorandum deposit to serve for the time being only, for the purpose of giving the Indianapolis Cabinet Company an apparent credit upon the books of the bank which in fact it did not have, and that said entries represented no actual transactions whatever, whereas the defendant Francis A. Coffin claimed and introduced evidence tending to show that all said paper was time paper and genuine, was actually discounted by the bank and the discount charged to said cabinet company upon the books of the bank and credit actually given by the bank to said cabinet company for said paper, and thereby the said company's debt to the bank on account of its overdraft and as drawer and endorser of the drafts on customers which had been returned unpaid was extinguished, and that this was done in execution of an agreement between the cabinet company represented by the defendant Francis A. Coffin, its president, and the bank, represented by said Haughey, its president, that such paper should be so received and credited for the purpose aforesaid; that for the payment of all said paper the Indianapolis Cabinet Company was liable, and that all the same was secured by the mortgaged bonds of the Indianapolis Cabinet Company to said Theodore P. Haughey, as trustee, theretofore executed and then held for the benefit of the bank, upon all the plant, property, and assets of said Indianapolis Cabinet Company of every nature and description and wheresoever situated, and that all of said paper was of substantial value and worth its face.

The Government introduced evidence tending to prove that said mortgage was not recorded in New York, Boston, or London, and

that large quantities of the manufactured goods of the Indianapolis Cabinet Company were sold and shipped away from the city of Indianapolis to the resident subsidiary corporations heretofore mentioned at each of said places, by the direction of defendant, with the knowledge and consent of Theodore P. Haughey, and that all
85 of the paper drawn by and upon said companies was of little value and practically worthless.

And be it further remembered that the evidence showed that all the paper upon which the credit mentioned in said 39th count was based was retained in said bank as a part of its assets until the same matured, when it was renewed by other paper of the same kind, and again renewed from time to time as it matured until said bank failed at the time hereinbefore stated, at which time said paper so renewed was in the possession of said bank as a part of its assets and passed as such into the possession of the receiver of said bank, by whom it was held as a part of the indebtedness of the cabinet company to said bank, secured by the mortgage executed to said Haughey as trustee for said bank by said cabinet company to secure the indebtedness of said cabinet company to said bank.

And be it further remembered that the evidence tended to show that said Indianapolis Cabinet Company at the time said bank failed was indebted to parties other than said Indianapolis National bank only in the sum of about forty to fifty thousand dollars.

And be it further remembered that upon the trial there was evidence tending to show that from the time of the organization of the Indianapolis Cabinet Company at all times until the appointment of a receiver therefor as aforesaid it had a large factory and plant in the city of Indianapolis and was engaged continuously in the manufacture and sale of desks, office furniture, and other wooden products, and that at all times since 1884 it had kept its bank account exclusively in and with the Indianapolis National bank, depositing therein the entire proceeds of said business and paying all disbursements on account of said business by checks thereon, deposits being made and checks paid almost daily and the account being also charged from time to time with drafts on customers which had been credited thereto and afterwards returned unpaid.

86 And be it further remembered that there was evidence tending to prove that said Indianapolis Cabinet Company, being indebted to said Indianapolis National bank, in the year 1884 executed a mortgage for thirty-seven thousand five hundred dollars, which mortgage was held by said Haughey and not recorded until he was directed by the Comptroller of the Currency to have it recorded to secure the debt of said bank, which mortgage in 1885 was released and a new mortgage executed to a trustee covering bonds of said Indianapolis Cabinet Company to the amount of sixty-two thousand five hundred dollars, which bonds were to their full amount delivered at the time of the execution of said mortgage and from time to time thereafter as its debt increased to said bank to secure the indebtedness of said cabinet company to said bank; that thereafter, in April, 1891, the debt to the bank having still further increased, the mortgage last mentioned was released and a third mortgage executed by the

cabinet company to trustees to secure bonds to the amount of one hundred and fifty thousand dollars, which bonds were delivered to the bank as collateral security for the indebtedness of the cabinet company to said bank; that this latter mortgage continued in force until the 28th day of February, 1892, when the debt to the bank having still further increased, said mortgage was released and a fourth mortgage was executed to a trustee to secure bonds to the amount of two hundred and fifty thousand dollars, which bonds were delivered to said bank to secure the payment of all obligations or evidences of debt for which credit had been then or might thereafter be given by said bank to said cabinet company or for the payment of which it was in any way liable.

And be it further remembered that upon said trial there was evidence tending to prove that from time to time during the
87 progress of the business of said Indianapolis Cabinet Company and so late as January, in the year 1893, dividends were by the said defendant, as an officer of said Indianapolis Cabinet Company, declared upon the capital stock of said Indianapolis Cabinet Company and paid out of the funds of said cabinet company largely in checks on said bank to the stockholders of said cabinet company, all or nearly of whom were near relatives of the said Coffin. There was also evidence tending to prove that profits were earned by said cabinet company during the time in which said dividends were paid exceeding in amount the dividends so paid, and that such excess of the profits and the moneys obtained from said bank by the said cabinet company were retained in the business of the company and went to increase its plant and other assets.

There was evidence tending to prove that during the time when dividends were declared and paid by the Indianapolis Cabinet Company that said dividends were not earned and said company was not making profits to the amount of said dividends or any profits whatever, and that it was unable during any of said time to pay the interest upon its debt to the Indianapolis National bank, and that at the time the last dividend of $30,000 was declared, on January the 6th, 1893, said cabinet company owed the Indianapolis National bank $267,700 and was insolvent.

And be it further remembered that upon said trial there was evidence tending to prove that after the failure of said Indianapolis National bank on the 25th day of July, 1893, the said defendant, F. A. Coffin, caused the property in the hands of the Indiana Cabinet Company at Boston and Indianapolis Office Furniture Company at New York to be sold to persons theretofore in their employ, taking the notes of such persons secured by chattel mortgage on said property for all or nearly all of said purchase-money, and used said
88 notes or a large part thereof in the payment of alleged indebtedness to certain persons claimed by the defendant to be creditors of said cabinet company, including the sister-in-law of the said defendant, Francis A. Coffin, in the sum of ten thousand dollars, and Mrs. Swift, a distant relative, in the sum of two thousand five hundred dollars, and others, creditors but not relatives, whom he wished to prefer, the indebtedness to said sister-in-law being upon

promissory notes of the company given to her for dividends declared upon stock of the company held by her.

And be it further remembered that there was also evidence tending to show that such sales and preferences were made pursuant to legal advice and for the purpose of preventing the property so sold from being wasted by attachment proceedings.

There was also evidence tending to prove that such preferences were not made pursuant to legal advice, but that the preference to Lydia R. Coffin, a sister-in-law of defendant F. A. Coffin, was made contrary to legal advice, and that the father-in-law of defendant F. A. Coffin was liable as an endorser upon one of the debts so preferred, and that defendant's counsel advised that said property in New York and Boston be sold and the assets be turned over to the receiver of the Indianapolis Cabinet Company for the purpose of being applied upon the debt of the Indianapolis Cabinet Company to the Indianapolis National bank; that there were $16,000 of notes received from the sale of the Boston and New York concerns turned over to Lydia R. Coffin as collateral security to her on a $10,000 note given her for dividends declared by said cabinet company dated August 1st, 1893, and due in three days; that said collateral notes were afterwards sold at public auction for the sum of $200 to an apparent outsider or third person, but really in the interest and for Lydia R. Coffin, but there was evidence tending to prove
89 that the defendant Francis A. Coffin was not connected with and had no knowledge of such sale.

Be it further remembered that the Government introduced evidence tending to show that on the first day of July, 1892, the indebtedness of said cabinet company to said bank aggregated the sum of $229,000, and that the indebtedness continued to increase thenceforward until the failure of said bank, when it aggregated the amount hereinbefore stated, and the Government claimed and introduced evidence tending to show that at the time of said failure the assets of said Indianapolis Cabinet Company amounted in value to not more than $176,000, and that its plant and tangible property connected therewith realized at the receiver's sale in October, 1894, only $76,000. On the other hand, the defendants claimed and introduced evidence tending to show that during all said time the greater portion of said increase of debt was caused by additions to said plant, extensions of said business, and increase of stock on hand of said Indianapolis Cabinet Company, and that the assets of said company were during said time increased to at least $500,000.

Be it further remembered that the defendant Francis A. Coffin claimed upon the trial of said cause and introduced evidence tending to prove that during all the time during which they had transactions with said bank Mr. Haughey, the president of the bank, kept himself fully informed as to the condition of the business of the Indianapolis Cabinet Company and made personal examinations from time to time as to the extent of its property and business, and that with his co-operation efforts had been made by the defendants to effect a reorganization of said company with an in-

creased capitalization for the purpose of paying its indebtedness to the bank, and had been and were being made at the time of the failure of the bank to effect the sale of its mortgage securities
90 for the same purpose, and that extensions of its business were made and carried on under separate corporate organizations in New York, Boston, London, and Richmond, Indiana, and by taking from its business at Indianapolis certain parts thereof and carrying the same on under separate corporate organizations for the purpose, in part, of inducing other manufacturers in the same line to take an interest in the business of said companies with a view to obtaining additional capital whereby the indebtedness of said companies to said bank could be discharged or largely reduced, and that by means of these efforts or some of them and from the business of the companies, which the evidence showed was increasing, and the cessation of expenditure in completing the plant and establishing its business, which there was evidence tending to show was near at hand, to the knowledge of said Haughey; that by continuing to loan money to said company it would, within a reasonable time, be able to discharge all of its indebtedness to the bank, and that the moneys of the bank which were received by said company during the time covered by the indictment were loaned by said Haughey to enable said company to continue in business and in the reasonable expectation that the same would be repaid, and that neither the said Haughey nor said Francis A. Coffin had any intent to defraud or injure said bank or deceive any agent appointed to examine said bank in any of said transactions, all of which there was evidence tending to prove.

There was evidence tending to prove that the drafts, acceptances, bills of exchange drawn by and upon each of said companies were never forwarded for collection, but were held by the direction of Theodore P. Haughey in the Indianapolis National bank, and that they were never paid; but the evidence also tended to prove
91 that the home offices of all said companies except the Indianapolis Desk Company were in the city of Indianapolis, and that the drafts of the Indianapolis Desk Company which were not forwarded for collection were accepted payable at said bank.

There was evidence tending to prove that Theodore P. Haughey and Francis A. Coffin knew and believed, as far back as the year 1889, that said Indianapolis Cabinet Company was insolvent and unable to pay its debt to said bank, and that there was no reasonable expectation of said cabinet company being able to pay its debt to the Indianapolis National bank.

Be it further remembered that there was evidence tending to prove that during all of the time covered by the transactions between said company and said bank said Haughey was the president of the bank and its largest single stockholder, and that he had at no time any pecuniary interest whatever in the Indianapolis Cabinet Company or any of the other companies connected with it or any relation thereto as officer or employé; that he was not related in any way to the defendant or any of the other stockholders or officers of the Indianapolis Cabinet Company or any of the other companies con-

nected with it, and that he did not receive or expect to receive in his individual capacity any benefit whatever from any of the transactions between the bank and said cabinet company or any of the companies connected with it or any benefit therefrom, directly or indirectly, except as president and stockholder of the bank, and that neither the defendant Francis A. Coffin nor any other person connected with or interested in the Indianapolis Cabinet Company or any of the companies connected with it as officers, employés, or stockholders had any interest in the Indianapolis National bank as shareholder or otherwise or with said Haughey in any relation whatever.

There was evidence tending to prove that large sums of
92 money were expended by the defendant F. A. Coffin trying to organize a company in England to purchase the property and plant of the Indianapolis Cabinet Company, and that Theodore P. Haughey was to be a director in the company to be organized for that purpose; but the evidence also tended to prove that the purpose that was had in view in selling the property of the cabinet company to the new company was to obtain the means of immediately paying the debt to the bank.

Be it further remembered that upon the same subject the Government introduced evidence tending to show that the character of the business carried on and directed by defendant was not such nor its management such nor its capital such as to warrant any expectation that said business would improve or that it would be able to repay the moneys that were so advanced by said bank to said cabinet company, and that said transactions were not in the nature of *bona fide* loans made upon any expectation or reasonable hope of repayment.

Be it further remembered that there was evidence tending to show that the receiver of the Indianapolis National bank when appointed took possession of all the mortgage bonds of said Indianapolis Cabinet Company found in said bank, amounting to $247,000, secured by mortgage on all of the property, plant, and assets of said company, and that he still retains and claims to hold the same as an asset of said bank pledged for the security of the indebtedness of said Indianapolis Cabinet Company and the various other companies connected therewith.

Be it further remembered that there was evidence tending to prove that the bonds above mentioned were not held by the Indianapolis National bank as collateral.

Be it further remembered that there was evidence tending to prove upon said trial that from time to time during the period covered by said indictment the Indianapolis Cabinet Company placed
93 in said bank and obtained credit upon accommodation paper, and that the Indianapolis Cabinet Company was liable as drawer, acceptor, or indorser of said paper and of all other paper discounted by it in said bank and for which it got credit or that the payment of the same was secured by the bonds of the Indianapolis Cabinet Company hereinbefore referred to, pledged as collateral.

There was evidence tending to prove that a large amount of the

paper for which the Indianapolis Cabinet Company received credit was sham and fictitious paper, and that a portion of it did not contain the name of the Indianapolis Cabinet Company as endorser, drawer, or acceptor.

Be it further remembered that there was evidence tending to show that the transactions mentioned in the ninth count of the indictment consisted solely of the taking up by the Indianapolis Cabinet Company of two drafts theretofore drawn by it upon customers and discounted by said bank and which had not been paid or accepted by the drawees, the aggregate amount of said drafts being $3,467.23, by a new draft drawn by said Indianapolis Cabinet Company on one of the drawees in the drafts taken up for the sum of $3,467.23, and that there was evidence tending to show that the drawee in said last-mentioned draft was at the time the same was drawn and accepted by said bank solvent and indebted to the cabinet company in an amount greater than the amount of said draft, for which said company had a right to draw.

There was evidence tending to show that the drawee in said draft above mentioned was at the time the same was drawn and placed in said bank insolvent, and said draft was never forwarded for acceptance or collection, but was held by the direction of Theodore P. Haughey in said bank, and that said defendant knew that
94 the drawee of said draft always refused to accept or honor drafts, and that he made all his settlements either in cash or by note, and that the indebtedness mentioned in said draft was afterwards settled by the note of said drawee, but was not turned over to said bank, but was delivered by said defendant to other creditors. There was evidence tending to show that the notes which were claimed to have been given for said indebtedness were not executed until after the failure of the bank, and that the disposition to other creditors was made by Albert S. Reed.

Be it further remembered that upon the trial the Government introduced evidence touching the business transactions generally between said bank and said cabinet company during the existence of said last-named corporation, and especially during the three years next preceding the finding of said indictment, said evidence tending to prove other misapplications of the moneys, funds, and credits of said bank than those charged in the counts under which said defendant Francis A. Coffin was on trial, among which was evidence tending to show that on November 5th, 1892, there was discounted by said bank, at the instance of said defendant, Francis A. Coffin, a draft for $7,500 drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company of New York, and which purported to be accepted by said Tufts Cabinet Company by the defendant Percival B. Coffin as secretary, and that no corporation or partnership of that name had ever existed or had any dealings with said Indianapolis Cabinet Company, while it was claimed by said defendant, and there was evidence tending to prove, that before the drawing of said draft the Indianapolis Cabinet Company had purchased a business in New York theretofore carried on by one John M. Tufts, and that it had been determined to incorporate and carry on said busi-

ness under the name of Tufts Cabinet Company, and that books of account for said business had been procured, labelled in said
95 name, and that pending the preparation of the incorporation papers its business was carried on in said name and goods exceeding in value the amount of said draft purchased by it from the Indianapolis Cabinet Company, and that it was not decided to abandon the incorporation of the Tufts Cabinet Company and adopt for said business the corporate name of the Indianapolis Office Furniture Company, as was in fact done, until only a few days before the drawing of said draft, and that said draft was drawn and discounted in said bank without the knowledge or consent of the defendant Francis A. Coffin.

There was evidence tending to prove that no business was carried on in the name of the Tufts Cabinet Company; that no books were opened up in said name, and that there was no account with the Tufts Cabinet Company on the books of the Indianapolis Cabinet Company, but that said account was placed on said books under the name of the Indianapolis Office Furniture Company; that the draft dated November 5th, 1892, drawn on the Tufts Cabinet Company, was accepted by P. B. Coffin, secretary, and was renewed in February of 1893 under the same name, but that the second and all other renewals thereof was in the name of the Indianapolis Office Furniture Company, and that said New York concern had not purchased or received at the time said draft was drawn and accepted goods from the Indianapolis Cabinet Company exceeding in value $4,400.

Be it further remembered that the transaction mentioned in the 11th count of the indictment consisted of the payment in currency by the bank of a check for $1,850.00 to meet the pay-roll of the Indianapolis Cabinet Company, and that it was claimed by the defendant Francis A. Coffin, and there was evidence tending to prove, that before such payment was made it had been agreed between the officers of the Indianapolis Cabinet Company and Mr. Haughey,
96 as president of the Indianapolis National bank, that whenever it was desired to procure funds from the bank for the payment of a pay-roll, when the account of the cabinet company was overdrawn, there should be made a deposit to the credit of the cabinet company to provide for the pay-roll check of cash items or commercial paper equal to the amount required for the pay-roll, and that such a deposit was made to provide for the payment of the pay-roll check in question, upon which deposit the bank collected an amount equal to or greater than said pay-roll check.

Be it further remembered that there was evidence tending to show, as to the transaction mentioned in the 11th count of the indictment, that a part of the deposit which was made on the day said transaction occurred, being the 17th day of June, 1893, to provide funds for the payment of the pay-roll check was not credited to the Indianapolis Cabinet Company on the books of the bank until the next business day, because the deposit was made after three o'clock, it being the custom of the bank in such case to enter the deposit on its books as being made on the next business day.

Be it further remembered that there was evidence tending to prove that there was money checked out of the Indianapolis National bank on the day mentioned in the 11th count of the indictment by the Indianapolis Cabinet Company to the amount of $2,871.74, and that the amount of commercial paper deposited on said day by said company amounted only to the sum of $2,131.52, of which items amounting to $1,718.63, when sent on for collection, were returned unpaid.

Be it further remembered that, as to the transactions mentioned in the 12th count of the indictment, it was claimed by the defendant Francis A. Coffin, and there was evidence tending to prove, that on the day on which said transactions occurred the Indianapolis Cabinet Company, to provide funds to meet the checks which
97 were paid on said day, discounted and had placed to its credit in said bank the sum of $2,265.60, the proceeds of a draft drawn by it on the American Desk & Seating Company of Chicago for the price of merchandise theretofore sold by the cabinet company to said American Desk & Seating Company, and that the evidence further tended to show that the American Desk & Seating Company was at the time solvent and indebted to the cabinet company in the amount of said draft, and that the cabinet company was entitled to draw its draft therefor, while it was claimed by the Government, and there was evidence tending to show, that the indebtedness of said American Desk & Seating Company at said time was less than the amount of such draft, and that under the agreement upon which the goods for which the draft was drawn were purchased the cabinet company was not entitled to draw for the price thereof, and that the Indianapolis Cabinet Company, after drawing said draft, received notes from the American Desk & Seating Company covering said indebtedness, and after receiving the same did not turn them over to said bank, but turned them over to other parties to secure other indebtedness, and that said draft on the American Desk & Seating Company was never forwarded to said company for collection or acceptance, but was retained in the Indianapolis National bank by the direction of Theodore P. Haughey, as president, which draft was never paid, and there was evidence tending to prove that the American Desk & Seating Company was insolvent.

Be it further remembered that as to the transaction mentioned in the fourth count, occurring on the 20th day of May, 1893, and the transaction selected by the Government as the substantive charge relied upon under the 13th count, being the payment of checks made on the 23d day of May, 1893, that there was evidence tending to show the following facts: That the account of the Indi-
98 anapolis Cabinet Company was overdrawn at the beginning of business on the 20th day of May in the sum of $3,505.65; that there was checked out on the 20th day of May, 1893, the sum of $3,272.29, in which was included a pay-roll check of $1,800; that there were deposited on said day cash items to the amount of $1,028.50 and a draft drawn by the Wooten Office Desk Company on the Indiana Cabinet Company of Boston and accepted by said

company, payable in three days, for the sum of $5,365.60; that said draft was discounted by the bank and the proceeds placed to the credit of the Indianapolis Cabinet Company, making a total deposit on said day of $6,394.10; that said draft was placed in the remittance account of said bank, which represents paper sent to different points where the sending bank has no account; that on the 23d day of May, 1893, said draft on the Indiana Cabinet Company was taken out of the bank by a note on the American Desk & Seating Company of Chicago, dated May 20th, 1893, at four months, for $5,365.60, executed for goods purchased by the American Desk & Seating Company of the Indianapolis Cabinet Company; that said American Desk & Seating Company was then solvent; that the checks paid on May 22, 1893, the next business day, amounted to $1,362.59, and on May 23d to $1,373.85, the aggregate of the checks paid between said 20th and 23d days of May, 1893, being less than the aggregate deposits resulting in a reduction of the overdraft existing at the beginning of business on the 20th of May, 1893.

There was evidence tending to show that the draft drawn by the Wooten Office Desk Company on the Indiana Cabinet Company, Boston, for $5,365.60 was never forwarded by the Indianapolis National bank for acceptance or collection, and that said draft was never entered upon the books of the Indianapolis Cabinet Company, and that the amounts checked out on the 20th, 22nd, and 23d days of May, 1893, were greater than the valid deposits made on
99 said days, and that the American Desk & Seating Company was insolvent, and that said note for $5,365.60 had never been paid, and, said company having failed after the failure of the bank, that the same was settled by the payment of 10 cents on a dollar to the receiver of the bank.

Be it further remembered that there was evidence tending to prove that from the year 1880 to the time of the failure of the Indianapolis National bank the defendant Francis A. Coffin drew out of said cabinet company, by means of dividends and salary, about the sum of $110,000, but there was also evidence tending to prove that of the amount of dividends, $60,000, included in said sum, $29,000 was stock dividends.

Be it further remembered that there was evidence tending to show that at the time the Indianapolis Veneer and Panel Company, the United States Office Furniture Company, the Wooten Office Desk Company, the Indianapolis Desk Company, the Indianapolis Office Furniture Company, and the Indiana Cabinet Company were about to begin business as separate and distinct organizations from the Indianapolis Cabinet Company and said last-named company was about to sell, transfer, and ship to each of said companies large quantities of the manufactured products and stock of goods belonging to said Indianapolis Cabinet Company and which were covered by the mortgage to secure the payment of the bonds of said company pledged as collateral to said Indianapolis National bank to secure the indebtedness of the cabinet company to said bank, that Mr. Haughey, the president of the bank, being informed of the organization of said companies and of the proposed transfer, sale, and

shipment of goods to said companies, expressed apprehension that the property so transferred, sold, and shipped would be withdrawn from under the lien of said mortgage, and that the security of the bank might thereby be in danger, and, as a condition of his
100 consent to such transfer, sale, and shipment and all future transfers, sales, and shipments to said companies, demanded of the defendant that as the same were made renewals of evidences of indebtedness of part of the debt of the Indianapolis Cabinet Company to said bank should be put in the shape of drafts drawn upon and accepted by the companies receiving such property, so that the bank might at all times while the indebtedness of the cabinet company to it continued stand in the position of a creditor of each of said companies to whom property was so transferred and shipped, and that thereupon renewals of the paper of the Indianapolis Cabinet Company were made by means of drafts so drawn upon and accepted by said companies.

101 Be it further remembered that during the trial of said cause the defendant Francis A. Coffin objected to the introduction of certain evidence proposed to be given by Louis J. Robinson, a witness for the Government, for reasons stated at the time; which objection was overruled, and to which ruling said defendant at the time excepted, and thereupon the evidence so objected to was received and heard by the jury. Said objection, the reasons therefor, the ruling of the court thereon, the defendant's exception thereto, and the evidence which was thereupon given being as follows, to wit:

"Questions by Mr. KERN:

"Q. Give to the jury the condition of the account of the Indianapolis Cabinet Company with the Indianapolis National bank at the close of business on the 19th day of May, 1893.

"Mr. WINTER: This refers, I suppose, Mr. Kern, to the fourth count?

"Mr. KERN: Yes, sir.

"Mr. WINTER: To this question, which refers to the transaction mentioned in the fourth count of the indictment, the defendants object for the reason that the fourth count of the indictment does not state facts sufficient to constitute a public offense, inasmuch as in the charge in the part of the count relating to the offense committed by Mr. Haughey, which the defendants are charged with aiding and abetting, it is charged that on the 20th day of May, 1893, Mr. Haughey wilfully misappropriated the sum of three thousand five hundred and seventy-two dollars and twenty-nine cents by paying the checks of the Indianapolis Cabinet Company drawn upon that day, when it had no funds in the bank to its credit and when the cabinet company was insolvent. The clause charging the defendants with aiding and abetting Mr. Haughey is simply that they aided and abetted him in misappropriating
102 the sum of three thousand two hundred and seventy-two dollars and twenty-nine cents, there being no words such as 'said' or 'aforesaid' or their equivalents used to connect the sum

referred to in the charging part of the indictment as to the defendants with the sum referred to in the part of the indictment which refers to Mr. Haughey, and for that reason we object on the ground that the indictment and the count does not state facts sufficient to constitute a public offense.

"We object further to the question being answered on the ground that the state of the account between the Indianapolis Cabinet Company and the Indianapolis National bank at the close of business on this day is incompetent, irrelevant, and immaterial, the fourth count of the indictment referring to a particular transaction, and we insist that the evidence should be confined to that transaction.

"The court overruled the objection; to which ruling of the court the defendants, by their counsel, at the time separately and severally excepted.

"A. At the close of business on the 19th day of May, 1893, the cabinet company's account was overdrawn thirty-five hundred and five dollars and sixty cents. On the 20th they are charged with checks amounting to $3,272.29 and credited on account of deposits $6,394.10, which reduced the overdraft to $383.79 at the close of business on the 20th."

103 Be it further remembered that at the conclusion of the evidence in said cause and before the commencement of the argument the defendant presented to the court a request in writing that he would give to the jury each of certain instructions numbered from one (1) to fifty-two (52), inclusive, but the court declined to give to the jury all and each of said instructions as asked; to which action of the court in refusing to give each of said instructions the defendant Francis A. Coffin, before the retirement of the jury, did then and there except and was allowed sixty days in which to file his bill of exceptions; said instructions so requested by the defendant and refused to be given by the court are as follows, to wit:

104 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

THE UNITED STATES
v. } No. 4926.
FRANCIS A. COFFIN and PERCIVAL B. COFFIN.

The defendants respectfully request the court to give to the jury each of the following instructions, numbered from one (1) to fifty-two (52), inclusive.

MILLER WINTER, & ELAM,
Attorneys for Defendants.

1.

105 This indictment, so far as you have to consider the same, consists of eighteen counts, each of which purports to charge a separate and independent criminal violation of the statute. Before you will be authorized to render a verdict of guilty against

either of the defendants it must have been proven beyond a reasonable doubt not merely that the defendant so found guilty has committed some wrongful or even criminal act, but it must have been proven that he has committed the particular act charged in some one or more of the counts of the indictment, since the Government is entitled to a verdict only in case it has proved the particular wrongful act or acts alleged in some one or more of the counts of the indictment. The counts so to be considered by you are those numbered one to sixteen, inclusive, and the 39th and 40th.

2.

106 The Government has offered no proof in support of any of the false-entry charges of the indictment except such as are contained in the 39th and 40th counts. You will therefore not consider the charges contained in the other false-entry counts of the indictment, but will treat them as abandoned by the Government. The other false-entry counts are the 37th, 38th, 41st, 42d, 43d, 44th, 45th, and 46th.

3.

107 The first count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National bank, did, on the 1st day of March, 1893, unlawfully, wilfully, and feloniously misapply certain moneys of said bank in said count specifically named, to wit, the sum of five thousand eight hundred and two dollars and eighty-four cents. Said count also charges that the defendants did aid and abet said Haughey to criminally misapply the moneys of said association in the sum of five thousand eight hundred and two dollars and eighty-four cents. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is charged to have misapplied, nor does it aver that the Indianapolis Cabinet Company, whose draft upon the Indianapolis Desk Company of London is alleged to have been placed to the credit of said cabinet company, and upon whose check the money is alleged to have been paid, or said Indianapolis Desk Company, was insolvent, or that the draft mentioned had been accepted by the Indianapolis Desk Company, or that the cabinet company was not entitled to draw said draft. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants.

4.

108 The second count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National bank, on the 20th day of February, 1893, did unlawfully, wilfully, and feloniously misapply certain moneys of said bank, in said count specifically named, to wit, $8,626.50. Said count also charges that the defendants did aid and abet said Haughey to criminally misapply the moneys of said association in the sum of $8,626.50. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is charged to

have misapplied. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants.

5.

109 The third count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National bank, did, on the 21st day of December, 1892, unlawfully, wilfully, and feloniously misapply certain moneys of said bank, in said count specifically named, to wit, the sum of $6,318.00. Said count also charges that the defendants did aid and abet said Haughey to criminally misapply the moneys of said association in the sum of $6,318.00. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is alleged to have misapplied. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants.

6.

110 The fourth count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National bank, did, on the 20th day of May, 1893, unlawfully, wilfully, and feloniously misapply certain moneys of said bank, in said count specifically named, to wit, the sum of $3,272.29. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is charged to have misapplied. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants.

7.

111 Each count of the indictment must upon the proof stand or fall by itself. You must consider each count as if it were a separate and independent indictment, and you must consider the particular charge made against the defendants in each count and the evidence applicable thereto as if that were the only charge in the indictment, and your finding upon each count must be guilty or not guilty, as the evidence applicable to that particular count proves or fails to prove that specific charge.

8.

112 Ordinarily the law presumes that a man intends the natural and legitimate consequences of his acts, but when a criminal intent is made, as it is under the statute upon which this indictment is based, an essential ingredient of the offense denounced, the proof of wrongful acts does not necessarily prove the criminal intent. Thus the charge in each count of the indictment for the misapplication of the moneys, funds, and credits of the bank is that Haughey, the president, committed the acts charged with intent to injure and defraud the bank, and that the defendants aided and abetted Haughey with like intent. In order to warrant a verdict

of guilty on any of these counts for misapplication, therefore, you must be satisfied from the evidence beyond a reasonable doubt, not only that Mr. Haughey did the particular acts charged, and that the defendants aided and abetted him therein, but you must be further satisfied from the evidence beyond a reasonable doubt that Mr. Haughey did said acts with the criminal intent aforesaid, and that the defendants aided and abetted him in such acts with a like criminal intent.

9.

113 With respect to certain counts of the indictment, the Government has elected to rely wholly or partially upon what is claimed to be a misapplication of the funds of the bank in the payment of certain checks drawn by the cabinet company on particular days covered by said counts when, it is claimed by the Government, the account of the cabinet company was overdrawn and such checks should not have been paid. Such payments, although made when the account of the cabinet company was overdrawn, may or may not have constituted a misapplication of the funds of the bank within the meaning of the law according to the intent with which the act was done, to be gathered from all the evidence bearing upon that subject. If the account was an active one, to which deposits were made and upon which checks were drawn almost daily, and which was further affected from time to time by drafts that had been endorsed and discounted by the cabinet company, being returned and charged back to their account, then the mere fact that on certain days checks were drawn and paid in excess of deposits made upon that particular day would not constitute any crime unless it should appear from all the evidence that such payments were made with the intent alleged in these counts of the indictment on the part of Mr. Haughey, and that the defendants on trial aided and abetted him in so doing and with like intent.

10.

114 The payment of checks of the Indianapolis Cabinet Company when its account was overdrawn or the discounting of drafts drawn by it on its customers or others or of notes or acceptances given to it by its customers or others was not a criminal misapplication of the funds of the bank within the meaning of this statute, even though the Indianapolis Cabinet Company was known by the president of the bank to be insolvent at the time, if in such transactions the president of the bank acted in good faith and without intent to injure or defraud the bank.

11.

115 If upon all the evidence in the case you have a reasonable doubt as to whether in any of the instances in which Mr. Haughey, the president of the bank, is charged in the indictment with having made a criminal misapplication of the moneys of the bank he believed the Indianapolis Cabinet Company to be solvent,

or that to refuse it further credit would result in loss to the bank, which might be avoided by furnishing further aid, and, acting upon such belief, did any of the acts so charged with the *bona fide* hope and intention of saving the bank from loss, and not with the intent to injure or defraud the bank, then your verdict should be not guilty as to each count charging such an instance of misapplication.

12.

116 An essential element in each of the counts charging a wilful misapplication of the funds of the bank is a loss by the bank of the moneys so charged to have been misapplied. If upon the evidence you have a reasonable doubt in any case whether the bank did suffer such loss, then the question of intent is wholly immaterial, as, in the absence of proof establishing such loss beyond a reasonable doubt, defendants, as to such counts, would be entitled to an acquittal.

13.

117 In this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National bank was largely overdrawn—that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact, and that Mr. Haughey, as president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans by a bank, yet loans are not infrequently made by banks in that form, and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based.

14.

118 Every wrongful or even unlawful misapplication of the moneys, funds, or credits of a national bank is not criminal under the statute upon which this indictment is based; for example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association, actually paid in. If, therefore, the directors or officers of a national bank have permitted an individual or company to borrow a sum in excess of one-tenth of its capital stock, actually paid in, such an act would be unlawful, but not, for that reason alone, criminal. In order to make the granting of such excessive loan or loans criminal there must be added an intent on the part of the officer or agent of the bank making or authorizing the loan to injure or defraud the bank. If, therefore, you should find that the indebtedness of the Indianapolis Cabinet Company, at the time of the misapplication of funds alleged in any count of the indictment, exceeded ten per cent. of the capital stock of the bank, the

transaction would not, for this reason alone, be a criminal misapplication.

15.

119 The intent on the part of Mr. Haughey in the alleged misapplications of the moneys of the bank to injure or defraud the bank is an essential ingredient of the offense charged against the defendants. In determining the question, therefore, of Mr. Haughey's intent, you should take into consideration the relation he bore to this bank, both as an officer and shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank, and it is for you to say, in the light of all the evidence, whether Mr. Haughey, in letting the cabinet company have such moneys, did so with such intent. If the evidence does not satisfy you beyond a reasonable doubt of such intent, then the Government's case is not made out. In determining this question, you may consider whether Mr. Haughey was in any way benefitted or hoped to be benefitted by the loans or advances to the cabinet company; and if you find from the evidence that there was no such benefit or hope thereof on the part of Mr. Haughey, such fact may be considered by you in determining whether there was any such intent as is charged; and if the making of such loans and advances was under such circumstances shown by the evidence as would injure or tend to injure Mr. Haughey, that fact may be considered in like manner and for the same purpose.

16.

120 If you shall find it to be a fact that said Haughey paid to the cabinet company and allowed it to receive the moneys of the bank in excess of ten per cent. of its capital stock, such fact does not of itself sustain the charge of a criminal misapplication of the funds of the bank. It is true that the statute provides that no more than ten per cent. of the capital stock of the bank shall be loaned to any one person or party, but it does not make it a crime on the part either of the bank officers to make or of the customer to receive loans in excess of that sum. In order to bring the case within the denunciation of this statute as a crime, it must be shown not merely that such excessive loan was made, but that it was made with the intent to injure or defraud the bank, and in order to sustain the charge against the defendants it must be shown that they aided and abetted with the same or like intent.

17.

121 In each of the counts of this indictment charging a wilful misapplication of the moneys, funds, and credits of the bank it is charged that such misapplication was effected by the payment out of the moneys of the bank of certain checks, drafts, etc., of the Indianapolis Cabinet Company, and that the moneys so paid were lost to said bank. If in any of the instances charged the moneys so withdrawn were repaid to the bank or were replaced in the bank with other funds by said cabinet company, so that the bank actually

suffered no loss by reason of such transaction, then as to any count in the indictment based upon such transaction, your finding should be not guilty.

18.

122 The counts of the indictment relating to misapplication charge a misapplication of the moneys of the bank. These charges of misapplication are not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled, unless it is also shown that as a result of such credit the cabinet company was enabled to and did withdraw from the bank moneys of some kind, resulting in loss to the bank. Thus evidence of the giving by the cabinet company and the receiving by the bank of renewal paper, upon which nothing was withdrawn from the bank, would not sustain the charge of criminal misapplication of the credits of the bank.

19.

123 Evidence has been introduced upon the trial with reference to drafts drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company and accepted in the name of the latter company, and it is claimed on behalf of the Government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the purpose of throwing light upon the intent of the defendants and of Theodore P. Haughey in connection with the charges of wrong-doing by them in the various counts of the indictment. This evidence can only be considered by you for this purpose, as there is no charge in any count of the indictment based upon this particular transaction, and the light it may throw upon the intent of the defendants or either of them, or of said Haughey, must depend upon all the circumstances shown to have attended the transaction.

20.

124 Some evidence has been given in this case tending to prove that the defendants, as officers of the Indianapolis Cabinet Company, and some of the other corporations organized as subsidiary thereto have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation by an understanding between the drawer and drawee; and if you shall find further that such drafts or paper, if placed in the bank for discount, were in whole or in substantial part secured by bonds or other collateral or was of real substantial value, this fact will be a further circumstance for your consideration, tending to show the good faith of such transactions with the bank.

21.

125 If you find from the evidence that moneys were advanced by the Indianapolis National bank to the Indianapolis Cabinet Company to take up drafts of said Indianapolis Cabinet Company on the Indianapolis Desk Company, which were held by said Indianapolis National bank with the understanding that said moneys were to be returned, and that they were in fact returned to said Indianapolis National bank, and that said bank lost nothing by such transactions, then you will not be warranted in finding that such moneys were misapplied by said Haughey, or that the defendants committed any crime in aiding and abetting him in such use of the funds of the bank.

22.

126 If there is evidence sufficient to raise a reasonable doubt in your minds as to whether or not any of the notes, drafts, or acceptances which were discounted by the Indianapolis National bank or placed to the credit of the Indianapolis Cabinet Company in its account with said bank, or which were given in renewal of notes or drafts which had been so discounted or credited, were executed in consideration of the fact that property of the Indianapolis Cabinet Company upon which the Indianapolis National bank held a mortgage was about to be shipped from the factory of said Indianapolis Cabinet Company to the parties to said notes or drafts other than the Indianapolis Cabinet Company, and in consideration of the consent of the Indianapolis National bank to such shipment and at its request, for the purpose of putting it in position of a creditor of such consignee, then, as to such notes or drafts, you cannot find that they were executed without a valuable consideration, or that they were accommodation paper, and the execution of such paper and its acceptance by the bank would not be a wilful misapplication of the moneys, funds, or credits of said bank.

23.

127 Evidence has been introduced with reference to the value of the plant and other assets of the Indianapolis Cabinet Company. Some question has been made, in the introduction of this testimony, as to what is the proper basis for the valuation of this property. So far as the evidence of values is important, it should have relation to the time during which the alleged wrongful acts charged against the defendants were committed, and the time or times at which they were obtaining the money, funds, or credits from the bank, and such values should be determined with reference to all the circumstances surrounding said cabinet company and said business at those times—namely, from about the 23d day of Sept., 1892, until near the time of the failure in 1893. This value is to be measured not by what the property would bring at a forced sale under the hammer, nor at a fancy price which might be placed upon it by a holder not wishing to sell. The true criterion is its market value, and "the market value of property is the price which

it will bring when it is offered for sale by one who desires but is not obliged to sell, and is bought by one who is under no necessity of having it." In estimating its value all the capabilities of the property and all the uses to which it may be applied or to which it is adapted are to be considered. In the language of the Supreme Court of the United States, "the inquiry in such cases must be, what is the property worth in the market, viewed, not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted—that is to say, what
128 is it worth from its availability for valuable uses? * * * Its capability being made thus available gives it a market value which can readily be estimated." Applying these rules and considering all the evidence on the subject which has been placed before you both by the Government and by the defendants, you will be able to arrive at a just conclusion as to the fair market value of this property during the period in controversy.

24.

129 As to some of the counts charging a criminal misapplication of the funds of the bank by the payment of checks of the Indianapolis Cabinet Company when it is claimed that it had no funds on deposit in the bank, it is claimed by the defendants that the checks so charged to have been wrongfully paid were checks to obtain money for the pay-rolls of the cabinet company, and that it was the custom and practice of the cabinet company to make deposits at or about the time of making such checks with a view to the payment thereof. If you find from the evidence that such was the practice of the cabinet company, and that in any of the instances where it is claimed by the Government that such pay-roll checks were wrongfully paid such deposits were in good faith made in accordance with that practice and with the sanction of the president of the bank to meet such pay-roll checks, then the mere fact, if you find it to be a fact, that in some of these instances the deposits do not appear upon the books of the bank as of the same date as the checks drawn against the same because deposits were made after three o'clock in the afternoon or on the day before or day after or for any other reason which has been sufficiently explained in the testimony, such facts would not prove or tend to prove that the payment of such checks was a criminal misapplication of the funds of the bank.

25.

130 In several of the counts charging a wilful misapplication of the funds of the bank the transactions called in question involved the payment out of the funds of the bank of checks drawn by the Indianapolis Cabinet Company on the bank, as defendants claim, to obtain funds with which to pay drafts theretofore drawn by said cabinet company payable in London, said drafts so payable in London being the property of the Indianapolis National bank. If you find from the evidence that the moneys so drawn out of the Indianapolis National bank were in fact used in the payment of such

London drafts, and that the moneys so paid were placed to the credit of the Indianapolis National bank with its New York correspondent in amounts equal to or greater than the amount of the checks so paid, and that by such transactions the Indianapolis National bank suffered no loss, then the proof of such transactions would not sustain the charge of a criminal misapplication of the funds of the Indianapolis National bank.

26.

131 If you find from the evidence that the transactions referred to in counts 1, 2, 3, 5, 6, 7, and 8 of the indictment relate exclusively or in part to transactions which in fact consisted only in the withdrawal from the funds of the Indianapolis National bank on deposit in Chicago of moneys which were transmitted by the Indianapolis Cabinet Company to London to be and which were in fact there used to pay drafts, the property of the Indianapolis National bank, and which had been sent by it through its correspondents in New York to London for payment, and that the moneys thus paid to discharge such drafts were equal to or greater than the sums withdrawn from the funds of said bank on deposit in Chicago and were placed to the credit of said Indianapolis National bank with its correspondent in New York, or if you have a reasonable doubt as to whether or not the transactions to which said counts refer, exclusively or in part, were of the character thus indicated, then as to said transactions or parts of transactions mentioned in said counts there would be no wilful misapplication of the funds of said Indianapolis National bank, and you should find the defendants not guilty as to said transactions or parts of transactions.

27.

132 The 10th count of the indictment relates in part to the payment by the Indianapolis National bank, on the 18th day of February, 1893, of a check of the Indianapolis Cabinet Company in favor of L. V. Horton for the sum of $2,550, upon which it is claimed by the Government a draft was drawn by the Indianapolis National bank on its New York correspondent in favor of said Horton for $2,550, which was paid out of the funds of the bank by said correspondent. If you find the facts of this transaction to be that the Indianapolis National bank at the time held a note or acceptance of the Wooton Office Desk Company of Richmond, of which L. V. Horton was secretary, for the sum of $2,550, which fell due on the 20th day of February, 1893, and that the said note had been sent by the Indianapolis National bank to the First National Bank of Richmond for collection and was held by said bank for that purpose on the 20th day of February, 1893, and that said Horton on that day paid the proceeds of the New York draft which had been issued on the 18th day of February, 1893, to said First National Bank of Richmond to take up the note or acceptance held by it, and that such proceeds were thereupon remitted to the Indianapolis National bank, then such transaction would not constitute a wilful

misapplication of the funds of the bank and you should find the defendants not guilty with respect thereto.

28.

133 The eighth count of the indictment charges the wilful misapplication of the funds of the bank in the sum of $3,960.84 by the payment by the bank of certain checks on the 23d day of September, 1892. On behalf of the Government it is insisted that the payment of these checks was a criminal misapplication of the funds of the bank, because the Indianapolis Cabinet Company on that day is not shown by the books of the bank to have had and did not have any funds on deposit in the bank out of which such checks could be paid. It is claimed by the defendants, on the other hand, that on that day the cabinet company did in fact make a *bona fide* deposit in the bank of $5,048.95, but that the same was not credited on the books of the bank until the next day, the 24th, when the same was so credited to the Indianapolis Cabinet Company. If you find from the evidence that such was the fact, that the deposit was actually made on the 23d, but that it was not credited to the cabinet company on the books of the bank until the next day, and on the next day it was so credited, then the payment of said checks on the 23d day of September, 1892, would not be a criminal misapplication of the funds of the bank, and on that count the defendants are entitled to a verdict of not guilty.

29.

134 The ninth count of the indictment charges a wilful misapplication of the funds of the bank in the payment of certain checks drawn by the Indianapolis Cabinet Company on the bank on the 14th day of July, 1893, amounting to the sum of $3,467.23. The defendants claim that these checks were two in number; were given by the Indianapolis Cabinet Company to the Indianapolis National bank solely to take up in said bank two drafts theretofore drawn by said Indianapolis Cabinet Company on R. Boker & Co., of Mexico, and the American Desk & Seating Company of Chicago, which drafts had been theretofore deposited in said bank and credited to said cabinet company, had been by the bank forwarded for collection and returned unaccepted and unpaid, and that on the same day the Indianapolis Cabinet Company gave to said bank, in place of said two drafts, a new draft on the American Desk & Seating Company for the amount of the two drafts so dishonored, and that by said transactions no loss was sustained by said bank. If you find from the evidence that such were the facts, and that as the result of said transaction no moneys, funds, or credits were lost to the bank, but that, as the result of the whole transaction, the bank had and held the draft of the Indianapolis Cabinet Company for the entire amount of said two claims for which the checks were given, then upon these facts no criminal misapplication of the funds of the bank is shown, and the defendants are entitled to an acquittal upon this count.

London drafts, and that the moneys so paid were placed to the credit of the Indianapolis National bank with its New York correspondent in amounts equal to or greater than the amount of the checks so paid, and that by such transactions the Indianapolis National bank suffered no loss, then the proof of such transactions would not sustain the charge of a criminal misapplication of the funds of the Indianapolis National bank.

26.

131 If you find from the evidence that the transactions referred to in counts 1, 2, 3, 5, 6, 7, and 8 of the indictment relate exclusively or in part to transactions which in fact consisted only in the withdrawal from the funds of the Indianapolis National bank on deposit in Chicago of moneys which were transmitted by the Indianapolis Cabinet Company to London to be and which were in fact there used to pay drafts, the property of the Indianapolis National bank, and which had been sent by it through its correspondents in New York to London for payment, and that the moneys thus paid to discharge such drafts were equal to or greater than the sums withdrawn from the funds of said bank on deposit in Chicago and were placed to the credit of said Indianapolis National bank with its correspondent in New York, or if you have a reasonable doubt as to whether or not the transactions to which said counts refer, exclusively or in part, were of the character thus indicated, then as to said transactions or parts of transactions mentioned in said counts there would be no wilful misapplication of the funds of said Indianapolis National bank, and you should find the defendants not guilty as to said transactions or parts of transactions.

27.

132 The 10th count of the indictment relates in part to the payment by the Indianapolis National bank, on the 18th day of February, 1893, of a check of the Indianapolis Cabinet Company in favor of L. V. Horton for the sum of $2,550, upon which it is claimed by the Government a draft was drawn by the Indianapolis National bank on its New York correspondent in favor of said Horton for $2,550, which was paid out of the funds of the bank by said correspondent. If you find the facts of this transaction to be that the Indianapolis National bank at the time held a note or acceptance of the Wooton Office Desk Company of Richmond, of which L. V. Horton was secretary, for the sum of $2,550, which fell due on the 20th day of February, 1893, and that the said note had been sent by the Indianapolis National bank to the First National Bank of Richmond for collection and was held by said bank for that purpose on the 20th day of February, 1893, and that said Horton on that day paid the proceeds of the New York draft which had been issued on the 18th day of February, 1893, to said First National Bank of Richmond to take up the note or acceptance held by it, and that such proceeds were thereupon remitted to the Indianapolis National bank, then such transaction would not constitute a wilful

misapplication of the funds of the bank and you should find the defendants not guilty with respect thereto.

28.

133 The eighth count of the indictment charges the wilful misapplication of the funds of the bank in the sum of $3,960.84 by the payment by the bank of certain checks on the 23d day of September, 1892. On behalf of the Government it is insisted that the payment of these checks was a criminal misapplication of the funds of the bank, because the Indianapolis Cabinet Company on that day is not shown by the books of the bank to have had and did not have any funds on deposit in the bank out of which such checks could be paid. It is claimed by the defendants, on the other hand, that on that day the cabinet company did in fact make a *bona fide* deposit in the bank of $5,048.95, but that the same was not credited on the books of the bank until the next day, the 24th, when the same was so credited to the Indianapolis Cabinet Company. If you find from the evidence that such was the fact, that the deposit was actually made on the 23d, but that it was not credited to the cabinet company on the books of the bank until the next day, and on the next day it was so credited, then the payment of said checks on the 23d day of September, 1892, would not be a criminal misapplication of the funds of the bank, and on that count the defendants are entitled to a verdict of not guilty.

29.

134 The ninth count of the indictment charges a wilful misapplication of the funds of the bank in the payment of certain checks drawn by the Indianapolis Cabinet Company on the bank on the 14th day of July, 1893, amounting to the sum of $3,467.23. The defendants claim that these checks were two in number; were given by the Indianapolis Cabinet Company to the Indianapolis National bank solely to take up in said bank two drafts theretofore drawn by said Indianapolis Cabinet Company on R. Boker & Co., of Mexico, and the American Desk & Seating Company of Chicago, which drafts had been theretofore deposited in said bank and credited to said cabinet company, had been by the bank forwarded for collection and returned unaccepted and unpaid, and that on the same day the Indianapolis Cabinet Company gave to said bank, in place of said two drafts, a new draft on the American Desk & Seating Company for the amount of the two drafts so dishonored, and that by said transactions no loss was sustained by said bank. If you find from the evidence that such were the facts, and that as the result of said transaction no moneys, funds, or credits were lost to the bank, but that, as the result of the whole transaction, the bank had and held the draft of the Indianapolis Cabinet Company for the entire amount of said two claims for which the checks were given, then upon these facts no criminal misapplication of the funds of the bank is shown, and the defendants are entitled to an acquittal upon this count.

30.

135 In the tenth count of the indictment a wilful misapplication of the moneys, funds, and credits of the bank is charged, to the amount of $5,525, by the payment of certain checks. It is claimed by the defendants that one of these checks was for $2,975 to obtain funds for the payment of the pay-roll, and that to meet this check there was deposited on the same day with the bank by the Indianapolis Cabinet Company the sum of $3,504.99, or about $500 more than said pay-roll check. If you find from the evidence that such were the facts, then the payment of such check would not be a criminal misapplication of the funds of the bank.

31.

136 By the eleventh count of the indictment it is charged that the moneys, funds, and credits of the bank were criminally misapplied by Mr. Haughey, the president, in the sum of $1,850, by paying and causing to be paid said sum of money out of the funds of the bank when the cabinet company had no fuuds to its credit in the bank for the payment of the same. On behalf of the defendants it is claimed that on said day the Indianapolis Cabinet Company made a *bona fide* deposit in said bank in excess of the amount of said check to provide for said check. If you find from the evidence that such was the fact, then the payment of said check would not be a criminal misapplication of the funds of the bank.

32.

137 The 12th count charges a misapplication on the 12th day of June, 1893, of the funds of the bank to the amount of $1,610.72 by the payment of certain checks of the cabinet company which ought not to have been paid. It is claimed on behalf of the defendants that on that same day the Indianapolis Cabinet Company made a deposit with said bank of a draft upon the American Desk & Seating Company for $2,282.10 to provide for said check, and that said American Desk & Seating Company was then owing said Indianapolis Cabinet Company the amount of said draft. If you find from the evidence that such were the facts, and that such deposit was made and said draft was received as a deposit by the bank and the cabinet company was given a credit upon the books of the bank therefor, then the payment of said check against said credit would not be a misapplication of the funds of the bank.

33.

138 The 13th is one of the general counts of the indictment and charges a criminal misapplication of the funds of the bank in the sum of $10,106.08 on the 9th day of May and on divers times between that and the 18th day of June, 1892. The Government has elected to rely upon a transaction of May 23d, 1893, as the substantive charge in this count—that is, upon the payment of checks on that day to the amount of $1,373.85. The claim of the Government

is that the defendants on that day had no funds or credits in the bank out of which said checks could be paid. The defendants, on the other hand, claim that on the 20th day of May they made a deposit in said bank of funds to the amount of $6,394.10 and received from the bank on said day a *bona fide* credit for such deposit, and they further claim that all of the checks made between said 20th and said 23d days of May, both inclusive, aggregated only $5,860.88. If you find from the evidence that such are the facts, then the payment of said checks would not be a criminal misapplication of the funds of the bank.

34.

139 The facts stated in the 39th count of the indictment do not sufficiently charge the defendants with the commission of any public offense, and as to this count they should be acquitted.

35.

140 In considering the false-entry charges in this indictment it is necessary that you shall know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of a bank of some alleged transaction which never occurred or of a transaction which did occur but which is falsely recorded would be a false entry. But an entry in which that which has been done by the officers or agents of the bank is correctly set forth is not a false entry. If, therefore, you find from the evidence, for instance, with reference to the alleged false entries in the 39th and 40th counts, that the bank had actually discounted and given to the cabinet company credit for the $44,000 of paper presented by the cabinet company and had authorized said cabinet company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry, but was and is a true entry, and the indictment, so far as based upon such entry, cannot be sustained.

36.

141 The 39th and 40th counts each charge the making of a false entry upon the books of the bank purporting to give a credit to the cabinet company of $44,000, when said company had not made such deposit and was not entitled to have such credit. The only difference between these two counts is that in the 39th count it is charged that Mr. Haughey made such false entry with intent to deceive an agent appointed or to be appointed to examine the affairs of the bank, while in the 40th count the charge is that Mr. Haughey made the false entry with intent to injure and defraud the bank. In order to entitle the Government to a verdict of guilty upon either of these counts, it must be shown by the proof beyond a reasonable doubt, not only that the entry was false, but that Mr. Haughey acted with the specific intent charged in such count. Thus, in the 39th count, proof of an intent on the part of Mr.

Haughey to deceive other persons, such as creditors or depositors of the bank, or the Comptroller of the Currency, or the directors of the bank, or the public in regard to the standing of the bank would not sustain the charge in that count, nor would proof of an intent to deceive any person or to injure or defraud any person other than the bank by such false entry sustain the charge in the 40th count.

37.

142 In the 39th and 40th counts of the indictment it is charged that Mr. Haughey, president of the bank, made or caused to be made in the Individual Ledger L, A to M, at page 931 of said book, under the date of May 9, 1893, and in the account of the Indianapolis Cabinet Company in the credit column on said page a false entry, to wit, 44,000, which entry, it is alleged, purported to show that the Indianapolis Cabinet Company was entitled to a credit of $44,000 on that day on the books of the bank. If you find that at the date of this transaction the Indianapolis Cabinet Company had presented to Mr. Haughey drafts drawn by it and by other companies upon various companies to the aggregate amount of $44,000 for the purpose of being substituted for an obligation which the cabinet company was then under to the bank on account of an overdraft in its account and for obligations it was then under to the bank on account of drafts previously deposited by it drawn upon customers, and for which it had received credit, and which had been returned unpaid and unaccepted and were then held by the bank and were the obligations of the cabinet company to that amount, and that Mr. Haughey accepted said paper to the amount of $44,000 in lieu of such overdraft and returned drafts then held by him, and that the entry of 44,000 to the credit of the cabinet company on page 931 of the ledger evidenced this credit as against such overdraft and a charge then made to them to the amount of the returned drafts, and that thereby the overdraft and obligation of the cabinet company on account of the returned drafts were wiped out, and that the paper thus deposited was retained by the bank as an obligation of the various companies executing it, and the previous obligation of the cabinet company on account of the overdraft and returned drafts was relinquished, the entry thus made of 44,000 on page 931 of the ledger would not be a false entry.

38.

143 If you find from the evidence that, the Indianapolis Cabinet Company's account in the Indianapolis National bank being overdrawn, the defendants or either of them, as officers of such cabinet company and at the request of Haughey, president of the bank, furnished to said bank bills, drafts, and notes of parties possessed of little or no means, aggregating an amount sufficient to balance and more than balance such account, which said Haughey, as president, received and placed to the credit of said cabinet company in said account, such action on the part of said Haughey giving such credit and entering the same in the books of the bank, whatever

may have been his motive, was not making a false entry within the meaning of this statute.

39.

144 If Mr. Haughey, as president of the bank, received from the cabinet company drafts, bills, or notes which, by reason of the insolvency of the parties or for any other reason, ought not to have been received and gave to said cabinet company credit therefor and afterwards caused an entry of such credit to be made upon the books of the bank, then whatever wrong was done in the matter by Mr. Haughey was, not in causing such entry to be made, but was further back, in receiving the paper and giving the credit. Not to have made the entry after receiving the paper and giving the credit would have been to commit another wrong, since it was his duty as president of the bank to see that the books should speak the exact truth as to that which he had caused to be done, and, however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute.

40.

145 In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the making of false entries, as charged in this indictment, it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence beyond a reasonable doubt that the defendants had knowledge of the making of such entries and that they did acts aiding and abetting Mr. Haughey in making the same with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for it is not sufficient to warrant their conviction for aiding and abetting the making of the false entry on the books, unless some knowledge of or connection with the making of such false entry is brought home to them.

41.

146 The intent to injure and defraud the bank or to deceive the bank examiner is the essence of the offence charged against the defendants as aiders and abettors of Mr. Haughey, the president, in making false entries. In order to convict them on any count relating to false entries the proof must not only show that Mr. Haughey did the acts complained of with the specific criminal intent charged, but it must also be shown that the defendants aided and abetted him with like specific criminal intent—that is, they must have acted either with an intent to injure or defraud the bank or to deceive the bank examiner. If upon all the facts proven in relation to false-entry charges you should have a reasonable doubt whether the defendants acted with the intent to injure or defraud the bank, as charged in the 40th count, or to deceive the bank ex-

aminer, as charged in the 39th count, the Government's case as to these counts would not be made out against them.

42.

147 If you should find from the evidence that the Indianapolis Cabinet Company caused the paper of other persons or corporations in the form of commercial paper to be substituted for indebtedness contracted by said cabinet company to the Indianapolis National bank and for which the bank held the obligations of the cabinet company, or that such paper was put into the bank by the cabinet company for moneys of the bank loaned or paid to the cabinet company, and that the sole purpose and intent of so doing was to conceal the fact that the indebtedness of the Indianapolis Cabinet Company to the bank exceeded ten per cent. of the capital stock of the bank, such facts would not of themselves warrant you in finding that the moneys so obtained were criminally misapplied or that the defendants were guilty by reason of such transactions, nor should they be considered by you as evidence of an intent on the part of either Mr. Haughey or the defendants to misapply the funds of the bank in any of the transactions to which the counts of the indictment charging misapplications apply.

43.

148 As you have been already told, the Government in this case is prosecuting the defendants for particular transactions charged to have been unlawful and criminal, as specifically set forth in certain specific counts of the indictment. Evidence has been introduced by the Government of other transactions between the Indianapolis Cabinet Company and the Indianapolis National bank and various other parties. This evidence has been allowed to go before you solely upon the question of intent and should be considered by you only in so far as it may tend to illustrate the intent of Mr. Haughey or of the defendants. Except for that purpose, you have nothing to do with other transactions than those specifically charged and prosecuted under this indictment. Except as illustrating such intent, the question of the lawfulness or unlawfulness of such other transactions is one with which you have nothing to do.

44.

149 In cases of this character jurors must not only have a conscientious belief of the guilt of the accused, but they must have a conscientious conviction that there is no reasonable doubt of the guilt.

Such a conviction as to the defendant's guilt must be produced by the evidence that a prudent man would feel safe to act upon in his most important matters. If such conviction is not so produced, a reasonable doubt exists, and each individual juror must have such conscientious conviction before there can be a verdict of guilty.

45.

150 Not only does the law presume in favor of the defendants' innocence at the beginning of their trial, but the burden of proving their guilt rests upon the Government throughout the trial. Under no circumstances does that burden shift, nor at any stage of the case are the defendants required to prove their innocence. Unless by the evidence placed before you their guilt is established beyond a reasonable doubt, they are entitled to an acquittal, and this rule applies as well to the question of the intent with which acts were done as to the question whether they were done.

46.

151 You are the exclusive judges of the weight of the testimony and the credibility of witnesses, and you alone have a right to determine and it is your sworn duty to determine all questions of fact upon the evidence. Whatever discussion of the evidence or of the facts in the case has been or shall be made by the court is designed for your assistance in the way of suggestion only. The court has neither the right nor the desire to control you in weighing the evidence and reaching your own conclusions upon the facts of the case.

47.

152 In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National bank, with intent to injure and defraud the bank, wilfully misapplied the funds of the bank, and also that, with intent to defraud the bank and to deceive an agent appointed or to be appointed to examine its affairs, he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having with like intent aided and abetted said Haughey in said wrongful acts. In order to sustain this charge of aiding and abetting against the defendants the evidence must show beyond a reasonable doubt that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, stood in a similar relation to the alleged crime as Mr. Haughey; that they approached it from the same direction and touched it at the same point. If, as matter of fact, in any of the transactions charged as criminal in this indictment, Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then, as to that transaction, they are not guilty as charged in this indictment.

48.

153 In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National bank, with intent to injure and defraud the bank, wilfully misapplied the funds of the bank, and also that, with intend to defraud the bank and to deceive an agent appointed or to be appointed to examine

its affairs, he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having with like intent aided and abetted said Haughey in said wrongful acts. In order to sustain this charge of aiding and abetting against the defendants the evidence must show beyond a reasonable doubt that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, approached the transaction charged as a crime from the same direction and touched it at the same point as Mr. Haughey. If, as matter of fact, in any of the transactions charged as criminal in this indictment, Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then they are not guilty as charged in this indictment.

49.

154 In this case the defendants are prosecuted as aiders and abettors of Theodore P. Haughey—that is, it is charged that they aided and abetted him in the commission of the crime charged. Such being the charge, before you find the defendants guilty you must first find from the evidence, beyond a reasonable doubt, that Theodore P. Haughey committed the offense charged in any given count of the indictment—that is, in any charge of the misapplication of the funds of the bank it must be shown to your satisfaction, beyond a reasonable doubt, 1st, that the Indianapolis Cabinet Company, at the time it obtained the money charged to have been misapplied, was insolvent; 2nd, that the money so furnished by the bank was lost; third, that there was a deliberate purpose on the part of Mr. Haughey at the time the discount was made or the money was furnished, if any was furnished, to injure or defraud the bank of such money; and, fourth, it must be further proved to your satisfaction, beyond a reasonable doubt, that in receiving and applying the money to the use of the Indianapolis Cabinet Company, if it was so received and applied, the defendants did so with a like intent.

50.

155 You have been told that the defendants are clothed with the presumption of innocence, and that this presumption attends them throughout the trial. The law indulges the same presumption in regard to Theodore P. Haughey, and unless this presumption has been removed by evidence showing his guilt as charged in any one or more counts of the indictment, beyond a reasonable doubt, the defendants are entitled to a verdict of acquittal.

51.

156 The mere discount of an unsecured note, even if the maker and the president of a bank making the discount know it is not secured, is not a crime if the maker believed that he would be able to provide for it at maturity. In order that such a transaction

may constitute a crime the original intent at the time the note or other paper is discounted must be to injure or defraud the bank, and the parties must believe at the time of the transaction that the party whose obligation is taken will not be able to discharge it.

52.

157 The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption the defendants are both entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence proving their guilt beyond a reasonable doubt.

MILLER, WINTER & ELAM,
Att'ys for Defendants.

158 And thereupon the court did give to the jury the following and no other instructions, to wit:

159 GENTLEMEN OF THE JURY: It is your duty to observe and follow the law as given to you by the court. In the State courts in criminal causes the jury are made judges both of the law and the facts. Such, however, is not the rule of this court. Here the court pronounces the law and it is your duty to accept and apply it to the case as given to you by the court. You are the sole judges of the facts and of what is proved, and any statements of fact made by the court are not controlling upon you. Such statements are intended to invite your attention to the matters of fact which the court deems important, and not for the purpose of controlling your judgment.

In order that you may the better understand the case and apply the facts established by the proofs to the law governing it, it is proper that the court should give you a brief explanation or definition of the offenses with which the defendants stand charged. They are charged with having aided and abetted one Theodore P. Haughey, the president of the Indianapolis National bank, in the doing of various acts and in the commission of various offenses in violation of section 5209 of the Revised Statutes of the United States. This section is as follows:

"SEC. 5209. Every president, director, cashier, teller, clerk or agent of any association (meaning a national banking association) who embezzles, abstracts or wilfully misapplies any of the moneys, funds or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report or statement of the association, with intent in either case to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to de-
160 ceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every

person who, with like intent, aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years nor more than ten."

It is unnecessary to notice or enumerate all the different acts which this section describes and makes criminal. It will be sufficient to direct your attention to those offenses in the commission of which the defendants stand charged with aiding and abetting. The counts of the indictment upon which the defendants are now upon trial charge them with aiding and abetting in two classes of the criminal acts enumerated and described in this section of the statute. They are charged with aiding and abetting Theodore P. Haughey, president of the Indianapolis National bank, in the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank, with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company, and also with aiding and abetting said Theodore P. Haughey as such president in making or causing to be made certain false entries in the books of the bank, with intent to injure and defraud as charged.

The counts of the indictment which charge the criminal and wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank are numbered from one to sixteen, inclusive. The count which charges the making of false entries in the books of the bank is numbered thirty-nine. You have nothing to do with the other counts of the indictment, which are withdrawn from your consideration.

I will now read to you the various counts which charge the defendants with aiding and abetting in the wilful misapplication of moneys, on which they have been placed upon trial.

(Here the court read to the jury the first sixteen counts of the indictment as the same are set out elsewhere in this record.)

The wilful and criminal misapplication of the moneys, funds, and credits of a national bank by its president, as defined in sec-
161 tion 5209, does not include every wrongful or unlawful misapplication of such moneys, funds, or credits. There are some unlawful applications of the moneys, funds, and credits of a national bank which are not made criminal and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association actually paid in, and that no such association shall make any loan or discount on the security of its own capital stock or be a purchaser or holder of such shares unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specific purposes. Now, if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in or should purchase its own capital stock or real estate contrary to the provisions of the law, such acts

and expenditures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by the law for such wrongful expenditures or such unlawful use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a forfeiture of all the rights and privileges of the association and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages the association, its shareholders or any other person, may sustain in consequence of such unauthorized application.

The wilful misapplication of the moneys, funds, and credits of a national bank which is made criminal by the above section of the statute is a misapplication knowingly and wilfully made by the officer charged, either for his own use and benefit or for the
162 use and benefit of some person or company other than the banking association whose moneys, funds, or credits are taken. To constitute the crime of wilfully misapplying the moneys, funds, or credits of a national bank there must be a wrongful appropriation or conversion of the moneys, funds, or credits of the bank by the party charged—in this case the president—either to his own use or to the use of some person or company other than the banking association, with intent to injure and defraud such association or some other person or company.

In the counts of the indictment relating to these offenses now on trial before you the defendants are charged with unlawfully and knowingly aiding and abetting Theodore P. Haughey, the president of the Indianapolis National bank, in wilfully misapplying the moneys, funds, and credits of said bank without the authority of its board of directors by converting the same to the use of the Indianapolis Cabinet Company in the manner already stated and with the intent to injure and defraud as charged. In order to constitute the offense of wilful misapplication by Theodore P. Haughey it is not necessary that he should have been previously in the actual possession of such moneys, funds, or credits under or by virtue of any trust duty or employment specially committed to him. The statute makes it a criminal offense for the president of a national bank to wilfully misapply its moneys, funds, or credits. Such wilful misapplication may be either for his own use or for the use and benefit of some person or company other than such banking association. It is not necessary to the commission of this offense that the officer of the bank who makes a wilful misapplication should derive any personal benefit or advantage from the transaction. When the moneys, funds, or credits of the bank are unlawfully taken from its possession and knowingly and wilfully misapplied, by converting them to the use of any person or company
163 other than the bank, with intent to injure and defraud, the offense described in the statute has been committed.

The criminal acts charged against Theodore P. Haughey may have been done directly and personally by him or they may have been done indirectly through the agency of others. If Theodore P. Haughey had such control, direction, and power of management by virtue of his relation to the bank as to direct an application of

its funds in such manner and under such circumstances as to constitute the offense of wilful misapplication, and he actually and wilfully made such direction or caused such misapplication to be made, he is equally guilty as if it were done by his own hand. If, therefore, it is shown by the proof beyond a reasonable doubt that Theodore P. Haughey as president of the Indianapolis National bank did knowingly and wilfully misapply the moneys, funds, or credits of the bank in manner and form as charged, by cashing, discounting, and paying for the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of said bank a large number of worthless notes, drafts, and bills of exchange known to him to be worthless, drawn by and upon various insolvent persons, firms, companies, or corporations known by him to be insolvent, and by paying out of the moneys, funds, and credits of the bank large numbers of checks in manner and form as charged, drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms, and corporations when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet company, knowing it to be insolvent, without the authority of the board of directors of said bank, with intent to injure and defraud said bank as charged, then he would be guilty of the offense charged; and if the defendants, Francis A. Coffin and Percival B. Coffin, are shown beyond a reasonable
164 doubt to have knowingly and unlawfully and with the like intent to injure and defraud said bank as charged aided and abetted the said Haughey, knowing him to be the president of said bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank, by converting the same to the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent as charged, then they would be guilty of the offense charged against them.

The particular acts of misapplication described in the several specific counts of the indictment on trial before you must be established by the proofs as therein respectively charged.

The thirteenth, fourteenth, fifteenth, and sixteenth counts of the indictment have been made specific by the election of the Government to ask a conviction under the thirteenth count on the transaction occurring on May twenty-third, 1893, and under the fourteenth count on the transaction occurring on June twenty-ninth, 1893, and under the fifteenth count on the transaction occurring on March eleventh, 1893, and under the sixteenth count on the transaction occurring on May thirty-first, 1893.

You are not authorized to find the defendants guilty of any other charge of aiding and abetting in the wilful misapplication of the moneys, funds, and credits of said bank except those specifically charged in the first twelve counts of the indictment now on trial before you, and also on the specific charges elected by the Government, as above stated, under the thirteenth, fourteenth, fifteenth, and sixteenth counts of the indictment.

On the counts for wilful misapplication the questions for you to

determine are: Did Theodore P. Haughey, as president of the Indianapolis National bank, knowingly and unlawfully and with intent to injure and defraud said bank in manner and form as
165 charged wilfully misapply the moneys, funds or credits of said bank by cashing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of the bank without authority from its board of directors, any notes, drafts, or bills of exchange drawn by and upon insolvent persons, firms, and companies, knowing them to be insolvent and knowing such notes, drafts, or bills of exchange to be valueless, in manner and form as charged in either count of the indictment? If he did, he has committed the offense of wilful misapplication as charged in the count or counts of the indictment now on trial relating to that subject which you find to have been so proved.

Did Theodore P. Haughey, as president of the Indianapolis National bank and with intent to injure and defraud said bank in manner and form as charged, unlawfully and wilfully misapply the moneys, funds, and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by the Indianapolis Cabinet Company, knowing it to be insolvent, said checks being drawn in favor of divers persons, firms, or companies, as charged, when said cabinet company had no moneys, funds, or credits on deposit against which to draw, as charged, and without authority from its board of directors? If he did, he has committed the offense of wilful misapplication as charged in the count or counts of the indictment on trial relating to that subject so far as such count or counts have been so proved.

Did Francis A. Coffin and Percival B. Coffin unlawfully and knowingly and with like intent to injure and defraud as charged aid and abet said Haughey, knowing him to be the president of said bank, in knowingly and wilfully misapplying the moneys, funds, and credits of said bank in manner and form as charged in any of the counts of the indictment now on trial before
166 you relating to that subject? If they did, they have committed the offense of aiding and abetting in the wilful misapplication of the moneys, funds, or credits of said bank in manner and form as charged in the counts of the indictment relating to that subject so far as such count or counts have been proved to your satisfaction.

Before you can find the defendants guilty of aiding and abetting in the wilful misapplication of the moneys or funds as charged you must be satisfied that the cabinet company at the time it obtained the moneys or funds charged to have been misapplied was insolvent; that the money so furnished by the bank or some part of it was lost; that Haughey intended at the time the discount was made or the money was furnished to defraud the bank as charged, and that in receiving and applying the money so furnished to the use of the cabinet company the defendants did so with a like intent.

If the Government as to any count or counts of the indictment now on trial before you has failed to prove the material allegations

therein contained to your satisfaction beyond a reasonable doubt it will be your duty to find the defendants not guilty as to such count or counts. If, however, you are satisfied beyond a reasonable doubt that Theodore P. Haughey is guilty of the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank with intent to injure and defraud as charged in any count or counts of the indictment now on trial relating to that subject, and that the defendants unlawfully and knowingly and with the like intent aided and abetted said Haughey in such wilful misapplication as charged in such count or counts of the indictment, then you ought to find the defendants guilty as they stand charged in such count or counts of the indictment so far as you find such count or counts to have been proved to your satisfaction.

If the president of a national bank in the honest exercise
167 of official discretion in good faith and without fraud makes loans or discounts for the actual or supposed advantage of the bank there is no criminal liability, although the transaction may be injudicious or unsafe and actually result in loss or damage to the bank. But if such loans or discounts are made in bad faith for the fraudulent purpose of giving gain or advantage to some other person or company and not in the honest exercise of official discretion the officer making them passes the line dividing honesty and dishonesty, and his action is criminal if done with intent to injure and defraud the banking association and it so results.

Theodore P. Haughey, between the meetings of the board of directors, is shown by the evidence to have had authority given him by the board of directors to make *bona fide* loans of the bank's funds and to make discounts of paper offered to the bank for discount, and he is shown to have had authority to have the amounts of such loans and discounts placed to the credit of the borrower. But this authority to make, direct, or sanction loans and discounts extended only to legitimate transactions honestly intended for the benefit of the bank. Loans or discounts made or credits given in bad faith for the purpose of defrauding the bank or to enable him to wrongfully convert the moneys, funds, or credits of the bank to the use and benefit of another would be an unlawful and criminal exercise of authority.

The form of a loan or the giving of credit upon the books of the bank may be adopted as a cover or pretense to conceal a fraudulent transaction, and when resorted to for that purpose and the moneys, funds, or credits of the bank are withdrawn by such fraudulent means and converted to the use of another person or company whereby the bank is defrauded he is guilty of a criminal act. A false and fictitious credit given to any one on the books of a bank is in judgment of law
no credit at all. It confers no right in favor of the party to
168 whom it is given, nor does it impose any obligation on the bank. The form which such a transaction may take, the methods adopted to reach the fraudulent end, or the instrumentalities employed, whether consisting of one act or a succession of acts, to accomplish a fraudulent and unlawful purpose in no way changes or alters the character of the act. The law looks through all forms,

devices, and contrivances to the intent and the result. No form of paper can sanctify fraud or give it validity. If, therefore, fictitious and fraudulent credits were given upon the books of the bank to the Indianapolis Cabinet Company, it thereby acquired no right to the funds of the bank represented by such credits. A credit upon the books of the bank obtained by the knowing and unauthorized acceptance of valueless paper or by credits fraudulently given without some consideration supposed to be valid passing to the bank is no credit in a legal sense, and when the funds of the bank are drawn out by checks upon such credits they are wrongfully obtained. Therefore, if the Indianapolis Cabinet Company obtained credits upon the books of the bank by making and negotiating to it notes, drafts, or other paper which Haughey and the defendants at the time knew did not represent any actual value whatever, with the intent to injure and defraud the bank, such credits gave the cabinet company no right to draw against them, and the payment of checks drawn upon credits so obtained would constitute a wrongful misapplication of the funds of the bank used in paying such checks if they were paid with the intention to injure and defraud the bank.

Before you can find Theodore P. Haughey guilty as charged in any count of the indictment of the wilful misapplication of the moneys, funds, and credits of the bank you must be satisfied beyond a reasonable doubt that such wilful misapplication was made in manner and form as charged in some count of the indict-
169 ment and with the intent to injure and defraud the bank as charged; and before you can find the defendants guilty you must be satisfied beyond a reasonable doubt that they unlawfully and knowingly, with the like intent, aided and abetted the said Haughey in making or causing to be made such wilful misapplications or some of them.

You cannot find the defendants guilty as charged, even if you find all the other allegations of the indictment proved, unless you are satisfied beyond a reasonable doubt that Haughey and the defendants committed the specific criminal acts charged in some count of the indictment with the intent to deceive or defraud as therein charged. In determining whether they had the criminal intent to deceive or defraud as charged or whether they acted in good faith you will take into consideration the situation of the parties, the course of business between them as well as between the cabinet company and the bank, and all the facts and circumstances in proof before you. Before you can find the defendants guilty upon the charges contained in any count of the indictment you must find that the moneys, funds, or credits of the bank or some material part of them have been wilfully misapplied by Theodore P. Haughey, as charged, with the intent to injure and defraud as charged, and that the defendants knowingly aided and abetted such wilful misapplication with the like intent. You will look to all the proof in the case in determining these questions. If you should find that moneys, funds, or credits have been wrongfully withdrawn from the bank by Haughey, you cannot find him guilty unless you find they

were withdrawn in manner and form as charged and with the fraudulent intent on his part to wilfully misapply the same as charged.

In respect to each of the counts of the indictment charging wilful misapplication, you will inquire and determine whether the moneys, funds, or credits or a material part of them charged to have been misapplied were withdrawn from the bank as charged;
170 whether they were withdrawn for and applied to the use of the cabinet company, as charged; whether the bank suffered loss thereby, as charged; whether, if such withdrawals were made, Haughey wilfully misapplied them to the use of the cabinet company with the intent to injure and defraud the bank, as charged, and, finally, whether the defendants knowingly aided and abetted said Haughey in making such wilful misapplication with the like intent. If you entertain a reasonable doubt on any of these matters, your verdict should be for the defendants.

It is not necessary to prove that the bank lost the precise sum or sums charged to have been lost. If any part of the sums charged to have been lost by the bank is proven to have been wilfully misapplied as charged, that will be sufficient to support the count or counts of the indictment so proved if all the other material facts in such count or counts are also proved to your satisfaction.

If Haughey and the defendants withdrew moneys from the bank for the use of the cabinet company by means of checks drawn by it on said bank when it had no funds or moneys on deposit against which to draw, if they acted in good faith, honestly believing that the cabinet company would be able to repay the same when required, they would not be guilty of the intent to defraud the bank as charged; but, on the other hand, if they acted in bad faith and did not believe and had no reasonable ground to believe that the cabinet company could repay such overdrafts when required to do so, then they had no lawful right to make such overdrafts or allow them to be made.

Every person is presumed to intend the natural and ordinary consequences of his own acts. Hence, if the natural and ordinary consequence of the acts of Haughey and the defendants, as shown by the proofs, were to injure and defraud the bank as charged, you would be authorized to find that such was their intent, if such intent is in harmony with the other proofs in the case.

171 You will, now, gentlemen of the jury, turn your attention to the charges in relation to false entries. Theodore P. Haughey is charged with having knowingly and purposely made or caused to be made certain false entries on the books of the Indianapolis National bank, and the defendants are charged with having aided and abetted him in the making of such false entry or entries. These entries relate to six pieces of paper which were brought to the bank on May ninth, 1893, amounting on their face in the aggregate to forty-four thousand dollars. The count of the indictment relating to these false entries is numbered thirty-nine, and you have nothing to do with any other counts in the indictment relating to false entries except this one. This count is as follows:

(Here the court read to the jury the thirty-ninth count as the same appears elsewhere in this record.)

An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, which represents as an actual transaction one which does not and did not exist, or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute. If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry. If Haughey actually accepted and discounted the paper in question and agreed to give and did give the cabinet company credit for the amount of $44,000 therefor, then, even though he and the defendants knew the paper to be valueless, the entry of such a transaction correctly on the books of the bank would not constitute a false entry; but if the paper was never accepted or discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or
172 defraud, as charged, such entry on the books of the bank would constitute a false entry.

An entry may be made personally or by direction. The knowingly and purposely making a false entry upon the books of the bank, with intent to deceive or defraud and which is calculated to deceive or defraud, is all that is necessary to bring the act within the meaning of the statute. The circumstance that the attempt to deceive was not done in an adroit or skilful manner would not relieve the act of its criminal character, nor will the fact that the falsity of the entry could be easily detected or exposed by inquiry or by an examination of other books or papers render such false entry, if you find it was made, any the less criminal if knowingly and purposely made with intent to deceive or defraud as charged.

In order to prove Theodore P. Haughey guilty of making false entries in the books of the bank it is not necessary for the Government to show that the false entries were made by his own hand or in his presence. If the proof shows to your satisfaction that the entries were in fact false in manner and form as charged and that they were made by some clerk or book-keeper under or in pursuance of his direction, with the intent to deceive or defraud as charged, that will be sufficient to make the act or acts his own.

If you are satisfied that Theodore P. Haughey did knowingly and purposely make or cause to be made the false entries as charged you cannot find the defendants guilty as aiders and abettors unless you are satisfied that they with like intent unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution.

If you should find from the evidence that articles of asso-
173 ciation were from time to time executed and filed by the de-

fendants in accordance with the statutes of the State of Indiana for the creation of corporations within such State, under the statute of the State providing for the incorporation of manufacturing companies, then, as matter of law, such corporations were thereby created, even though you should find that nothing was paid into the treasury of such corporation as capital stock, and on such facts such corporation would not be a fictitious person. But if such corporations were organized by the defendants not for the purposes of legitimate business, but as mere instrumentalities for the criminal purpose of wrongfully and unlawfully obtaining money from the Indianapolis National bank for the use and benefit of the Indianapolis Cabinet Company, and they were so used by the defendants, then the fact that such corporations were organized with legal formality would not of itself excuse the defendants, if their guilt as charged is otherwise proved to your satisfaction.

The indictment contains charges that divers persons, firms, and corporations were insolvent. In a commercial sense a person or corporation is said to be insolvent if unable to pay in the ordinary course of business the obligations which his creditors may enforce by recourse to legal measures, even though his estate when wound up may prove sufficient to pay all his debts. In a larger and more usual sense a person is said to be insolvent whose estate when wound up is not sufficient to pay his debts in full. In this case, if you are satisfied that the Indianapolis Cabinet Company or any other person, firm, or corporation alleged to have been insolvent at the time charged had not sufficient property or assets to pay its debts in full when wound up, then such person, firm, or corporation was insolvent in manner and form as charged in the indictment.

Evidence has been introduced in regard to the value of the plant and other property of the Indianapolis Cabinet Company
174 during the time covered by the indictment. This value is to be measured, not by what the property would bring at a forced sale, nor at a fancy price which might be placed upon it by the owner not wishing to sell. The true criterion is its market value, and the market value of property is the price which it will bring when it is offered for sale by one who desires, but who is not obliged, to sell, and is bought by one who is under no necessity of having it. In estimating this value all the capabilities of the property and all the uses to which it might be applied must be considered. Tested by this principle, would the plant and other property of the Indianapolis Cabinet Company have sold for enough to have paid its debts in full? If not, the Indianapolis Cabinet Company was insolvent.

You may find both of the defendants guilty upon all of the counts of the indictment upon which they are now upon trial, if you are satisfied beyond a reasonable doubt that the proofs justify it, or you may find the defendants guilty upon any one or more of the counts of the indictment and not guilty upon the others. You may find each defendant guilty or not guilty, or you may find one of them guilty and the other not guilty. Before you can find either of the defendants guilty you must be satisfied of his guilt in manner and

form as charged in some one of the counts of the indictment upon which they are on trial beyond a reasonable doubt.

In order to make the defendants liable as aiders and abettors, as charged in the indictment, it is necessary that they should be proved to have done or said something showing their consent to or participation in the unlawful and criminal acts of Theodore P. Haughey and contributing to their execution, as charged in the indictment.

By the statute of limitations the defendants cannot be convicted for any of the offenses charged unless the same were shown to have been committed within three years next preceding the time
175 of the finding and return of the indictment, which was on the twenty-first day of December, 1893.

The burden of proving Haughey and the defendants guilty as charged rests upon the Government, and this burden does not shift from it.

Haughey and the defendants are presumed to be innocent until their guilt in manner and form as charged in some count of the indictment is proved beyond a reasonable doubt. To justify you in returning a verdict of guilty the evidence should be of such a character as to overcome this presumption of innocence and to satisfy each one of you of the guilt of Haughey and the defendants as charged, to the exclusion of every reasonable doubt. If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the innocence of Haughey or the defendants, it is your duty to do so and in that case find the defendants not guilty; and if, after weighing the proofs in the light of the presumption I have mentioned, you impartially and honestly entertain the belief that Haughey or the defendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt and you should acquit the defendants. It is not meant by this that the proof should establish their guilt to a certainty, but merely that you should not convict unless from the evidence you find Haughey and the defendants guilty beyond a reasonable doubt. Speculative notions or possibilities arising upon mere conjecture, not arising or deducible from the proof or from the want of it, should not be confounded with a reasonable doubt. A doubt suggested by the ingenuity of counsel or by your own ingenuity, not legitimately warranted by the evidence or the want of it, or one born of a merciful inclination to permit the defendants to escape the penalty of the law, or one prompted by sympathy for them or those connected with them, is not what is meant by a reasonable doubt. A reasonable doubt, as that term is employed in the administration
176 of the criminal law, is an honest, substantial misgiving, generated by the proof or the want of it—that is, such a state of the proof as fails to convince your judgment or conscience and satisfy your reason of the guilt of the accused. If the evidence when carefully examined, weighed, compared, and considered produces in your minds a settled conviction or belief of the guilt of Haughey and of the defendants, such an abiding conviction as you would be willing to act upon in the most weighty and important affairs of your own life, you may be said to be free from any reasonable doubt

and may find a verdict in accordance with that conviction or belief.

You are the sole judges of the weight and credit to be given to the testimony of the witnesses. You ought fairly and impartially to consider and weigh all the testimony and proofs given in the case. To determine the weight and credibility of the testimony of any witness you have a right to consider his bias or prejudice, if any is shown, his interest in the result of the case, his intelligence and candor, and the knowledge which he is shown to possess touching the matters about which he testifies. You should especially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit the temptation is strong to color, pervert, or withhold the facts. The law permits the defendants at their own request to testify in their behalf. The defendant Francis A. Coffin has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit. Percival B. Coffin has not testified in this cause. You will not consider his failure to testify nor draw any inference to his prejudice from
177 such omission. He has done nothing but to avail himself of a legal right in so doing, and you must not consider it to his prejudice or injury.

The evidence in the case shows that the offenses charged in the indictment, if committed at all, were committed in the State of Indiana and within the jurisdiction of the court. It is shown that Theodore P. Haughey was, during the period of time covered by the indictment, the president of the Indianapolis National bank; that said bank was a national bank, duly organized under the national banking laws, and was engaged in the business of banking during the period of time covered by the indictment, and that it had an authorized capital stock of three hundred thousand dollars, actually paid in. It is also shown that Theodore P. Haughey, as such president, had the entire custody, control, and management of the affairs of the bank, and that the directors of the bank gave him no authority to do or commit the various criminal acts charged against him in the indictment. It is further shown by the evidence that large sums of money were obtained from the bank by the Indianapolis Cabinet Company by means of notes, drafts, and bills of exchange which were wholly or partially valueless. It is also proven that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no moneys, funds, or credits on deposit with said bank with which to pay said checks. The evidence tends to show that the defendant Francis A. Coffin was responsible for the drawing and presentation of such checks. It is also shown that the cabinet company and the various corporations affiliated with it organized by the defendants were during the whole

period of time covered by the indictment insolvent, and the evidence tends to show that the defendants, as well as Theo-
178 dore P. Haughey, had knowledge of such insolvency. The evidence shows that the defendants organized a number of corporations, ostensibly for the conduct of their business in this city, in Richmond, Indiana, and in the cities of Boston, New York, and London, England. These corporations are shown by the evidence to have had little or no substantial capital and to have been used as mere instrumentalities for furthering the purpose of the defendants as the corporators and owners of the Indianapolis Cabinet Company. It will be for you to determine whether they were organized and conducted as legitimate corporations or whether they were intended to be used as instrumentalities to more successfully obtain moneys, funds, and credits from the Indianapolis National bank. It is claimed by the Government that these corporations were merely colorable, nothing more than names, and were organized as devices to enable the defendants to obtain money from the bank for the use of the cabinet company. The proofs seem to me to support this contention.

Carefully weigh all the evidence in the case and from it, under the rules of law which I have given you, determine the guilt or innocence of the defendants. With you and not with the court rests the responsibility of finding and determining the facts. The views of the court on questions of fact are not controlling upon you. You have nothing to do with the case except to determine the single question of the guilt or innocence of the defendants. If you should return a verdict of guilty, the measure of punishment to be inflicted upon the defendants is committed to the court. When you retire to deliberate on your verdict, select one of your number to act as your foreman. When you have agreed upon a verdict, let your foreman sign it and then return it into court. Forms of verdict will be furnished for your use.

And now, gentlemen of the jury, thanking you for the patience and attention that you have bestowed upon this case, the court leaves the determination of it in your hands, with a full as-
179 surance that the verdict you will return will be in accordance with the facts under the law as the court has given it to you.

180 And thereupon, before the retirement of the jury, the defendant Francis A. Coffin did except to certain parts of said instructions so given by the court, such parts of the instructions being at the time specifically indicated to the court, and was allowed sixty days in which to file his bill of exceptions. Such parts of the instructions given by the court excepted to were as follows and the exceptions were taken as hereinafter set forth:

181 UNITED STATES OF AMERICA, } *sct:*
District of Indiana, }

In the District Court of the United States for the District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN, PERCIVAL B. COFFIN.

The defendants, Francis A. Coffin and Percival B. Coffin, and each of them, except to each of the following parts of the instructions given by the court to the jury in this case on the second (2d) day of October, 1895, as such exceptions were taken and the parts so excepted to enclosed in parentheses and numbered before the retirement of the jury, the parts so excepted to being as follows, to wit:

No. 1. "They are charged with aiding and abetting Theodore P. Haughey, president of the Indianapolis National bank, in the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company."

No. 2. "And also with aiding and abetting said Theodore P. Haughey, as such president, in making or causing to be made certain false entries in the books of the bank with intent to injure and defraud as charged."

182 No. 3. "There are some unlawful applications of the moneys, funds, and credits of a national bank which are not made criminal and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association actually paid in, and that no such association shall make any loan or discount on the security of its own capital stock or be a purchaser or holder of such shares unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specific purposes. Now, if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in, or should purchase its own capital stock or real estate contrary to the provisions of the law, such acts and expenditures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by the law for such wrongful expenditures or such unlawful use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a forfeiture of all the rights and privileges of the association and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages the association, its shareholders, or any other person may sustain in consequence of such unauthorized application."

183 No. 4. "The statute makes it a criminal offense for the president of a national bank to wilfully misapply its moneys, funds, or credits."

No. 5. "When the moneys, funds, or credits of the bank are unlawfully taken from its possession, and knowingly and wilfully misapplied by converting them to the use of any person or company other than the bank, with intent to injure and defraud, the offense described in the statute has been committed."

No. 6. If, therefore, it is shown by the proof beyond a reasonable doubt that Theodore P. Haughey, as president of the Indianapolis National bank, did knowingly and wilfully misapply the moneys, funds, or credits of the bank in manner and form as charged, by cashing, discounting, and paying for the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of said bank, a large number of worthless notes, drafts, and bills of exchange, known to him to be worthless, drawn by and upon various insolvent persons, firms, companies, or corporations known by him to be insolvent, and by paying out of the moneys, funds, and credits of the bank large numbers of checks in manner and form as charged, drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms, and corporations, when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet company, knowing it to be insolvent, without the authority of the board of directors of said bank, with intent to injure and defraud said bank as charged, then he would be guilty of the offense charged.

184 No. 7. "And if the defendants, Francis A. Coffin and Percival B. Coffin, are shown beyond a reasonable doubt to have knowingly and unlawfully, and with the like intent to injure and defraud said bank as charged, aided and abetted the said Haughey, knowing him to be the president of said bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank by converting the same to the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent as charged, then they would be guilty of the offense charged against them."

No. 8. "On the counts for wilful misapplication the questions for you to determine are: Did Theodore P. Haughey, as president of the Indianapolis National bank, knowingly and unlawfully and with intent to injure and defraud said bank in manner and form as charged wilfully misapply the moneys, funds, or credits of said bank by cashing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of the bank, without authority from its board of directors, any notes, drafts, or bills of exchange drawn by and upon insolvent persons, firms, and companies, knowing them to be insolvent and knowing such notes, drafts, or bills of exchange to be valueless, in manner and form as charged in either count of the indictment? If he did, he has committed the offense of wilful misapplication as charged in the count or counts of the

indictment now on trial relating to that subject which you find to have been so proved."

No. 9. "Did Theodore P. Haughey, as president of the Indianapolis National bank and with intent to injure and defraud
185 said bank in manner and form as charged, unlawfully and wilfully misapply the moneys, funds, and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by the Indianapolis Cabinet Company, knowing it to be insolvent, said checks being drawn in favor of divers persons, firms, or companies as charged, when said cabinet company had no moneys, funds, or credits on deposit against which to draw, as charged, and without authority from its board of directors? If he did, he has committed the offense of wilful misapplication as charged in the count or counts of the indictment on trial relating to that subject so far as such count or counts have been so proved."

No. 10. "Did Francis A. Coffin and Percival B. Coffin unlawfully and knowingly and with the like intent to injure and defraud as charged aid and abet said Haughey, knowing him to be the president of said bank, in knowingly and wilfully misapplying the moneys, funds, and credits of said bank in manner and form as charged in any of the counts of the indictment now on trial before you relating to that subject? If they did, they have committed the offense of aiding and abetting in the wilful misapplication of the moneys, funds, or credits of said bank in manner and form as charged in the counts of the indictment relating to that subject so far as such count or counts have been proved to your satisfaction."

No. 11. "Before you can find the defendants guilty of aiding and abetting in the wilful misapplication of the moneys or funds as charged you must be satisfied that the cabinet company at the time it obtained the moneys or funds charged to have been misapplied was insolvent; that the money so furnished by the bank, or
186 some part of it, was lost; that Haughey intended at the time the discount was made or the money was furnished to defraud the bank as charged, and that in receiving and applying the money so furnished to the use of the cabinet company the defendants did so with a like intent."

No. 12. "If, however, you are satisfied beyond a reasonable doubt that Theodore P. Haughey is guilty of the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank with intent to injure and defraud, as charged in any count or counts of the indictment now on trial relating to that subject, and that the defendants unlawfully and knowingly and with the like intent aided and abetted said Haughey in such wilful misapplication, as charged in such count or counts of the indictment, then you ought to find the defendants guilty as they stand charged in such count or counts of the indictment so far as you find such count or counts to have been proved to your satisfaction."

No. 13. "Loans or discounts made or credits given in bad faith for the purpose of defrauding the bank or to enable him to wrongfully convert the moneys, funds, or credits of the bank to the use

and benefit of another would be an unlawful and criminal exercise of authority."

No. 14. "A credit upon the books of the bank obtained by the knowing and unauthorized acceptance of valueless paper or by credits fraudulently given without some consideration supposed to be valid passing to the bank is no credit in a legal sense, and when the funds of the bank are drawn out by checks upon such credits they are wrongfully obtained."

187 No. 15. "Therefore if the Indianapolis Cabinet Company obtained credits upon the books of the bank by making and negotiating to it notes, drafts, or other paper which Haughey and the defendants at the time knew did not represent any actual value whatever, with the intent to injure and defraud the bank, such credits gave the cabinet company no right to draw against them, and the payment of checks drawn upon credits so obtained would constitute a wrongful misapplication of the funds of the bank used in paying such checks if they were paid with the intention to injure and defraud the bank."

No. 16. "Before you can find Theodore P. Haughey guilty as charged in any count of the indictment of the wilful misapplication of the moneys, funds, and credits of the bank you must be satisfied beyond a reasonable doubt that such wilful misapplication was made in manner and form as charged in some count of the indictment and with the intent to injure and defraud the bank as charged, and before you can find the defendants guilty you must be satisfied beyond a reasonable doubt that they unlawfully and knowingly, with the like intent, aided and abetted the said Haughey in making or causing to be made such wilful misapplications or some of them."

No. 17. "You cannot find the defendants guilty as charged, even if you find all the other allegations of the indictment proved, unless you are satisfied beyond a reasonable doubt that Haughey and the defendants committed the specific criminal acts charged in some count of the indictment, with the intent to deceive or defraud, as therein charged. In determining whether they had the criminal intent to deceive or defraud as charged or whether they acted

188 in good faith you will take into consideration the situation of the parties, the course of business between them, as well as between the cabinet company and the bank, and all the facts and circumstances in proof before you."

No. 18. "You will look to all the proof in the case in determining these questions."

No. 19. "If you should find that moneys, funds, or credits have been wrongfully withdrawn from the bank by Haughey you cannot find him guilty unless you find that they were withdrawn in manner and form as charged and with the fraudulent intent on his part to wilfully misapply the same as charged."

No. 20. "In respect to each of the counts of the indictment charging wilful misapplications, you will inquire and determine whether the moneys, funds, or credits, or a material part of them charged to have been misapplied, were withdrawn from the bank as charged;

whether they were withdrawn for and applied to the use of the cabinet company as charged; whether the bank suffered loss thereby as charged; whether, if such withdrawals were made, Haughey wilfully misapplied them to the use of the cabinet company with the intent to injure and defraud the bank as charged, and finally whether the defendants knowingly aided and abetted said Haughey in making such wilful misapplication with the like intent. If you entertain a reasonable doubt on any of these matters your verdict should be for the defendants."

No. 21. "It is not necessary to prove that the bank lost the
189 precise sum or sums charged to have been lost. If any part of the sums charged to have been lost by the bank is proven to have been wilfully misapplied as charged, that will be sufficient to support the count or counts of the indictment so proved if all the other material facts in such count or counts are also proved to your satisfaction."

No. 22. "If Haughey and the defendants withdrew moneys from the bank for the use of the cabinet company by means of checks drawn by it on said bank when it had no funds or moneys on deposit against which to draw, if they acted in good faith, honestly believing that the cabinet company would be able to repay the same when required, they would not be guilty of the intent to defraud the bank as charged; but, on the other hand, if they acted in bad faith, and did not believe and had no reasonable ground to believe that the cabinet company could repay such overdrafts when required to do so, then they had no lawful right to make such overdrafts or allow them to be made."

No. 23. "An entry knowingly and purposely made on the books of the bank with intent to deceive or defraud as charged, which represents as an actual transaction one which does not and did not exist;"

No. 24. "Or an entry knowingly and purposely made with intent to deceive and defraud as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute."

No. 25. "If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry."

190 No. 26. "But if the paper was never accepted nor discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit, and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry."

No. 27. "If you are satisfied that Theodore P. Haughey did knowingly and purposely make or cause to be made the false entries as charged, you cannot find the defendants guilty as aiders and abetters unless you are satisfied that they with like intent unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution."

No. 28. "But if such corporations were organized by the defend-

ants not for the purposes of legitimate business, but as mere instrumentalities for the criminal purpose of wrongfully and unlawfully obtaining money from the Indianapolis National bank for the use and benefit of the Indianapolis Cabinet Company, and they were so used by the defendants, then the fact that such corporations were organized with legal formality would not of itself excuse the defendants if their guilt as charged is otherwise proved to your satisfaction."

No. 29. "In this case, if you are satisfied that the Indianapolis Cabinet Company or any other person, firm, or corporation alleged to have been insolvent at the time charged had not sufficient property or assets to pay its debts in full when wound up, then
191 such person, firm, or corporation was insolvent in manner and form as charged in the indictment."

No. 30. "The true criterion is its market value, and the market value of property is the price which it will bring when it is offered for sale by one who desires but who is not obliged to sell, and is bought by one who is under no necessity of having it. In estimating this value all the capabilities of the property and all the uses to which it might be applied must be considered. Tested by this principle, would the plant and other property of the Indianapolis Cabinet Company have sold for enough to have paid its debts in full? If not, the Indianapolis Cabinet Company was insolvent."

No. 31. "In order to make the defendants liable as aiders and abettors as charged in the indictment, it is necessary that they should be proved to have done or said something showing their consent to or participation in the unlawful and criminal acts of Theodore P. Haughey and contributing to their execution as charged in the indictment."

No. 32. "If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the innocence of Haughey or the defendants, it is your duty to do so, and in that case find the defendants not guilty."

No. 33. "And if, after weighing the proofs in the light of the presumption I have mentioned, you impartially and honestly entertain the belief that Haughey or the defendants may be inno-
192 cent of the offenses charged against them, they are entitled to the benefit of that doubt and you should acquit the defendants."

No. 34. "Where the witness has a direct, personal interest in the result of the suit the temptation is strong to color, pervert, or withhold the facts. The law permits the defendants at their own request to testify in their behalf. The defendant Francis A. Coffin has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

No. 35. "It is further shown by the evidence that large sums of money were obtained from the bank by the Indianapolis Cabinet

Company by means of notes, drafts, and bills of exchange which were wholly or partially valueless."

No. 36. "It is also proven that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no moneys, funds, or credits on deposit with said bank with which to pay said checks."

No. 37. "The evidence tends to show that the defendant Francis A. Coffin was responsible for the drawing and presentation of such checks."

193 No. 38. "It is also shown that the cabinet company and the various corporations affiliated with it, organized by the defendants, were, during the whole period of time covered by the indictment, insolvent."

No. 39. "And the evidence tends to show that the defendants, as well as Theodore P. Haughey, had knowledge of such insolvency."

No. 40. "The evidence shows that the defendants organized a number of corporations ostensibly for the conduct of their business in this city, in Richmond, Indiana, and in the cities of Boston, New York, and London, England. These corporations are shown by the evidence to have had little or no substantial capital and to have been used as mere instrumentalities for furthering the purposes of the defendants as the corporators and owners of the Indianapolis Cabinet Company."

No. 41. "It will be for you to determine whether they were organized and conducted as legitimate corporations or whether they were intended to be used as instrumentalities to more successfully obtain moneys, funds, and credits from the Indianapolis National bank."

No. 42. "It is claimed by the Government that these corporations were merely colorable, nothing more than names, and were organized as devices to enable the defendants to obtain money from the bank for the use of the cabinet company. The proofs seem to me to support this contention."

194 WEDNESDAY, *October* 2, 1895—9 o'clock a. m. session.

After the court read its instructions to the jury the following proceedings were had:

Mr. MILLER: If your honor please, we desire on behalf of the defendants and each of them to enter an exception to the action of the court in refusing each of the instructions asked on their behalf and we desire to enter some exceptions to the instructions given, but we ask time in which to read them over again and to note our exceptions before the jury retires.

The COURT: You can take the instructions and look them over. The court will retain the jury here until you have done it.

Mr. MILLER: Probably I should say it will take us an hour or more.

(Counsel for the defense then retire from the court-room for consultation, and on their return the following proceedings were had:)

The COURT: Let the jury take their seats.

Mr. MILLER: Your honor, we have noted, if your honor please, in parentheses and numbered upon the margin the parts of the instructions as given by your honor to which we wish to except. We wish the exception, of course, to be separate to each part and we will, if your honor will permit us to take these after the jury retires, have them written out, the particular parts written out, upon separate paper and filed so that they may thus appear—that is, having our exceptions noted to the refusal to give each instruction
195 asked and to the giving of the parts, each of the parts, which we have noted.

The COURT: The court desires to know, however, what parts of its charge exception will be taken to.

Mr. MILLER: The court can readily find them.

The COURT: You may read such parts of the charge as you except to. If I think they ought to be modified, I will do that.

Mr. MILLER: We probably had better come back to do that, if your honor please. It will take some time. It is now 12 o'clock.

The COURT: Do you think, gentlemen of the jury, that you can be back here by half past one o'clock? Remember the instructions I have heretofore given you. They still bind you in regard to your duty. You will be permitted to separate until half past one. Adjourn court until half past one o'clock.

(Whereupon the court adjourned.)

Thereupon at once Mr. Miller, handing the instructions given, marked as above, to the judge, said: "If your honor please, you can take these now and look at them," and the judge received the same and retained them during the intermission.

OCTOBER 2, 1895—1.35 p. m.

(The court met pursuant to adjournment.)

The COURT: Anything further that you desire?

Mr. MILLER: I think not, except that we should take time to file a bill of exceptions, sixty days.

The COURT: You can have sixty days. Gentlemen of the jury, you can now retire and consider of your verdict under the
196 instructions that the court has given you. You will take with you forms of verdict which have been prepared by the clerk, and I will call your attention to them and explain them a little, so that you will have no trouble in filling them out. If you should find the defendants guilty of each of the counts in the indictment, the form of verdict that I hold in my right hand, which reads in this way, "We, the jury, find the defendants guilty as charged in the indictment," will be the proper form, and let that be signed by one of your number as foreman. If you should find the defendants guilty on some of the counts of the indictment and not guilty on the others, the form of the verdict will be, "We, the jury,

find the defendants guilty as charged in the —," and there is a blank space where you can put in the numbers of the counts of the indictment on which you find them guilty, if you find them guilty on less than the whole. Then it would read, "We, the jury, find the defendants guilty as charged in the first, second, third, fourth, and fifth," or whatever they are, "counts of the indictment, and not guilty as charged in the blank," inserting the counts on which you do not find them guilty, if any. Another form of verdict is, in the event that you should find one of the defendants guilty and the other not guilty, "We, the jury, find the defendant"—blank, to put in the name—"guilty as charged in the indictment, and the defendant"—blank, if you find one of them not guilty—
197 "not guilty." If you should need other forms of verdict, gentlemen of the jury, you will be able to prepare them yourselves.

Is there anything further desired by counsel for the defendants? (No response.)

Gentlemen, you may now retire with your bailiff. Has the bailiff been sworn, Mr. Clerk?

The CLERK: He has been sworn.

The COURT: You may retire. Before retiring I want to add a word further to you. You may take your seats. They can take the original indictment or the copy from which I read.

Mr. WINTER: Is that a fresh copy?

The COURT: No, sir; it is printed.

Mr. WINTER: Is there any writing on it?

The COURT: Yes; there is something, but I don't think it amounts to anything. Look it over and see.

Mr. WINTER: These pencil marks ought to be erased.

The COURT: If that is sent out with you, gentlemen, you will disregard—pay no attention to any written memoranda on the indictment. I think that will cover it.

Mr. WINTER: I think there is some memoranda here that Mr. Corr made.

The COURT: I think that when the jury are told to pay no attention to any memoranda that are made there, just simply the printed copy——

Mr. WINTER: I think these memoranda ought to be erased.
198 It is easy enough to erase them. It is a part of Mr. Corr's argument. I can get them all off in a few minutes.

Mr. BURKE: Tell them that all the counts that are not to be considered are crossed out.

The COURT: Well, the jury will not forget that the only counts before you are the sixteen first counts in the indictment and count number thirty-nine. The others are withdrawn. I desire to say, gentlemen of the jury, further that if you should agree upon a verdict at any time before six o'clock you can notify your bailiff and he will notify me. I shall be in my room in the building and I will come in at any time to receive your verdict. If you should not have agreed by six o'clock, you will be permitted to separate for an hour for supper, and during the separation be careful to say

nothing about the case or allow any one to speak to you about it. You may return to your room at seven o'clock and proceed with your deliberation. If at any time before ten o'clock you should agree upon a verdict, you can notify the court and the court will receive it. If you should not have agreed upon a verdict before ten o'clock, you may proceed with your deliberations until eleven o'clock, and if you should agree upon a verdict before eleven o'clock, let that be signed by your foreman and put in an envelope and sealed. You may, upon agreeing on a verdict, if you should do so after the hour of ten o'clock, then separate, but make no disclosure, directly or indirectly, if you should find a verdict between
199 ten and eleven o'clock tonight, as to what your verdict is. Come into court at nine o'clock tomorrow morning, and the court will receive your verdict then, and if you fail to agree upon a verdict by eleven o'clock tonight, you will be permitted to separate for the night, bearing in mind the instructions that I have given you during the hours of separation for supper. Say nothing to any one about the case during your adjournment for the night, if you should have one, nor permit any one to speak to you about the case. If you should fail, however, to agree upon a verdict by eleven o'clock and seal it, as I have indicated, you may resume your deliberations tomorrow morning at eight o'clock and proceed with your consideration of the case, and the court will be about here to receive your verdict during the day, and then, if you have not agreed upon a verdict by twelve o'clock, you may again separate, under the same charge as already indicated, for an hour to get your dinner, and return to your room and proceed with your deliberations. I think that I have instructed you far enough, gentlemen of the jury.

Mr. BURKE: If they have reached a verdict between ten and eleven, and seal it, they are to say nothing about what their verdict is?

The COURT; Yes; you understand that, that if you seal a verdict between ten and eleven o'clock tonight you are to make no disclosure of what the verdict is, and are all to come into court tomorrow morning at nine o'clock, where your verdict will be opened by the clerk of the court and read in your presence in open court. I think, gentlemen, you may now retire with your bailiff.

(Whereupon the jury retired at 1.50 p. m.)

200 Be it further remembered that on the trial of said cause one of the witnesses, C. H. Tyler, named in the affidavit for a continuance filed before the commencement of the trial and set out in a bill of exceptions heretofore filed appeared and testified, but the other witness, George B. Stoddard, named in said affidavit did not appear or testify in the cause.

Be it further remembered that, a verdict in said cause having been rendered, as elsewhere set out in this record, the defendant Francis A. Coffin did on the 5th day of October, 1895, file his motion for a new trial, which was in these words, to wit:

201 District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN. } No. 4926. Defendant's Motion for a New Trial.

The defendant Francis A. Coffin moves the court to set aside the verdict as to him and grant him a new trial in this case for the following reasons, to wit:

1st. The verdict of the jury is contrary to the evidence and is not sustained by sufficient evidence.

2d. The verdict of the jury is contrary to law.

2½. The court erred in admitting evidence by the witness Louis J. Robinson in support of the fourth count of the indictment over the objection and exception of this defendant.

3rd. The court erred in refusing to give to the jury each of the instructions requested by the defendants except the 2d, the 3d, the 4th, the 5th, the 21st, the 25th, the 26th, the 27th, the 28th, & 30th, as the same were presented to the court before the commencement of the argument and filed and as the same are set out in the bill of exceptions, said instructions so requested and refused being numbered from one to fifty-two, inclusive, with the foregoing exceptions.

4th. The court erred in giving to the jury each part of the instructions which were given, as such part was specifically designated and excepted to by this defendant before the retirement of the jury and as the same are set out in the bill of exceptions, said parts so designated and excepted to being numbered from one to forty-two, inclusive.

5th. The court erred in overruling this defendant's appli-
202 cation for a continuance in said cause, made before the commencement of said trial.

MILLER, WINTER & ELAM,
Attorneys for Defendant.

203 Which motion was by the court overruled; to which ruling the said Francis A. Coffin did then and there except and was allowed sixty days in which to file his bill of exceptions.

And thereupon said Francis A. Coffin did file his motion in arrest of judgment upon said verdict; which motion was and is in the words and figures following, to wit:

204 District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN *et al.* } No. 4926. Motion in Arrest of Judgment.

The defendant Francis A. Coffin moves the court to arrest the judgment in this case because neither of the counts upon which this defendant was found guilty by the jury, to wit, neither the fourth, the ninth, the eleventh, the twelfth, the thirteenth, the four-

teenth, or the thirty-ninth count of the indictment, states facts sufficient to constitute a crime under the statute of the United States.

MILLER, WINTER & ELAM,
Att'ys for Def't.

205 Which motion was by the court overruled; to which ruling the said Francis A. Coffin did then and there except and was allowed sixty days in which to file his bill of exceptions.

And now the said defendant, Francis A. Coffin, presents this his bill of exceptions to the court and asks that the same be signed and sealed and made a part of the record in this cause, which is accordingly done this 22d day of October, 1895.

(Signed) JOHN H. BAKER, *Judge.*

206 And afterwards, to wit, at the May term of said court, on the 26th day of October, 1895, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Francis A. Coffin, in person and by Miller, Winter and Elam, his attorneys, also comes, and the court doth now find, upon the verdict of the jury heretofore rendered herein, that said defendant, Francis A. Coffin, is guilty as charged in the 4th, 9th, 11th, 12th, 13th, 14th, and 39th counts of said indictment.

And said defendant, Francis A. Coffin, having been inquired of what he had to say why the sentence of the court should not be pronounced on the verdict of the jury, answered nothing.

It is therefore considered by the court that said defendant, Francis A. Coffin, is guilty as charged in the 4th, 9th, 11th, 12th, 13th, 14th, and 39th counts of said indictment, and it is further considered by the court that said defendant, Francis A. Coffin, for the offence so charged in each of said counts, be imprisoned and confined in the Northern prison of the State of Indiana for the term of eight (8) years on each of said counts, and that the sentence and judgment herein upon said counts shall be concurrent and not cumulative; and it is further considered by the court that said defendant, Francis A. Coffin, do pay unto the United States the costs of this prosecution, taxed at $—, and that he do stand committed until said costs are paid.

207 And afterwards, to wit, on the 26th day of October, 1895, aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant Francis A. Coffin, by Miller, Winter & Elam, his attorneys, and files his petition for a writ of error and also his assignment of errors herein in the words following, to wit:

207*a* DISTRICT OF INDIANA:

District Court.

THE UNITED STATES
vs.
FRANCIS A. COFFIN. } Number 4926.

Application for Writ of Error from the Supreme Court of the United States to the District Court of the United States and for Supersedeas.

To the Honorable William A. Woods, circuit judge for the seventh circuit:

The said Francis A. Coffin respectfully petitions that a writ of error be issued in this cause on his behalf, to the end that the proceedings and trial had in this cause may be reviewed by the Supreme Court of the United States.

The undersigned, Francis A. Coffin, further respectfully petitioning, shows to your honor that he is by the judgment of the district court of the United States for the district of Indiana sentenced to serve a term of eight years from the 26th day of October, 1895, in the Northern penitentiary of the State of Indiana; that in said record are many and manifest errors committed by the trial court to the prejudice of this defendant, as shown by said record and the assignment of errors, which is hereto attached, whereby your petitioner was prevented from having a fair trial.

Wherefore your petitioner prays your honor that said writ of error shall operate as a writ of supersedeas pending a hear-
207*b* ing of said cause in the Supreme Court, and that in the meantime this petitioner be enlarged on bail, to be fixed by your honor; and your petitioner will ever pray, etc.

FRANCIS A. COFFIN,
By MILLER, WINTER & ELAM,
His Attorneys.

208 In the Supreme Court of the United States, October Term, 1895.

FRANCIS A. COFFIN
vs.
THE UNITED STATES. } No. —. In Error to the District Court of the United States, District of Indiana.

Assignment of Errors.

Francis A. Coffin, plaintiff in error, by his counsel, comes and, complaining of the United States, says there is manifest error in the proceedings of the trial court in this cause, in this, to wit:

First. Because the trial court erred in overruling the defendant's motion in arrest of judgment upon said indictment.

Second. The court erred in overruling the defendant's motion for a continuance on account of the absence of the witness George B. Stoddard, as per affidavit, as shown in the bill of exceptions.

Third. The court erred in admitting in evidence the testimony of Louis J. Robinson in support of the fourth count of the indictment as follows:

"Questions by Mr. KERN:

Q. Give to the jury the condition of the account of the Indianapolis Cabinet Company with the Indianapolis National bank at the close of business on the 19th day of May, 1893.

Mr. WINTER: This refers, I suppose, Mr. Kern, to the fourth count?

Mr. KERN: Yes, sir.

209 Mr. WINTER: To this question, which refers to the transaction mentioned in the fourth count of the indictment, the defendants object for the reason that the fourth count of the indictment does not state facts sufficient to constitute a public offense, inasmuch as in the charge in the part of the count relating to the offense committed by Mr. Haughey, which the defendants are charged with aiding and abetting, it is charged that on the 20th day of May, 1893, Mr. Haughey wilfully misappropriated the sum of three thousand two hundred and seventy-two dollars and twenty-nine cents by paying the checks of the Indianapolis Cabinet Company drawn upon that day when it had no funds in the bank to its credit and when the cabinet company was insolvent. The clause charging the defendants with aiding and abetting Mr. Haughey is simply that they aided and abetted him in misappropriating the sum of three thousand two hundred and seventy-two dollars and twenty-nine cents, there being no words such as 'said' or 'aforesaid' or their equivalents used to connect the sum referred to in the charging part of the indictment as to the defendants with the sum referred to in the part of the indictment which refers to Mr. Haughey, and for that reason we object on the ground that the indictment and the count does not state facts sufficient to constitute a public offense.

We object further to the question being answered on the ground that the state of the account between the Indianapolis Cabinet Company and the Indianapolis National bank at the close of business on this day is incompetent, irrelevant, and immaterial, the fourth count of the indictment referring to a particular transaction, and we insist that the evidence should be confined to that transaction.

The court overruled the objection; to which ruling of the court the defendants, by their counsel, at the time separately and severally excepted.

210 A. At the close of business on the 19th day of May, 1893, the cabinet company's account was overdrawn thirty-five hundred and five dollars and sixty cents. On the 20th they are charged with checks amounting to $3,272.29 and credited on account of deposits $6,394.10, which reduced the overdraft to $383.79 at the close of business on the 20th."

Fourth. The court erred in refusing to give to the jury instruction numbered six (6) asked by the defendants, which was and is in the words and figures following, to wit:

6.

"The fourth count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National bank, did, on the 20th day of May, 1893, unlawfully, wilfully, and feloniously misapply certain moneys of said bank in said count specifically named, to wit, the sum of $3,272.29. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is charged to have misapplied. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants."

Fifth. The court erred in refusing to give to the jury instruction numbered seven (7) asked by the defendants, which was and is in the words and figures following, to wit:

7.

Each count of the indictment must upon the proof stand or fall by itself. You must consider each count as if it were a separate and independent indictment, and you must consider the particular charge made against the defendants in each count and the evidence applicable thereto as if that were the only charge in the in-
211 dictment, and your finding upon each count must be guilty or not guilty as the evidence applicable to that particular count proves or fails to prove that specific charge.

Sixth. The court erred in refusing to give to the jury instruction numbered eight (8) asked by the defendants, which was and is in the words following, to wit:

8.

Ordinarily the law presumes that a man intends the natural and legitimate consequences of his acts, but when a criminal intent is made, as it is under the statute upon which this indictment is based, an essential ingredient of the offense denounced, the proof of wrongful acts does not, necessarily, prove the criminal intent. Thus the charge in each count of the indictment for the misapplication of the moneys, funds, and credits of the bank is that Haughey, the president, committed the acts charged with intent to injure and defraud the bank, and that the defendants aided and abetted Haughey with like intent. In order to warrant a verdict of guilty on any of these counts for misapplication, therefore, you must be satisfied from the evidence beyond a reasonable doubt, not only that Mr. Haughey did the particular acts charged, and that the defendants aided and abetted him therein, but you must be further satisfied from the evidence beyond a reasonable doubt that Mr. Haughey did said acts with the criminal intent aforesaid, and that the defendants aided and abetted him in such acts with a like criminal intent.

Seventh. The court erred in refusing to give to the jury instruction numbered nine (9) asked by the defendants, which was and is in the words and figures following, to wit:

9.

With respect to certain counts of the indictment the Gov-
212 ernment has elected to rely wholly or partially upon what is claimed to be a misapplication of the funds of the bank in the payment of certain checks drawn by the cabinet company on particular days covered by said counts when, it is claimed by the Government, the account of the cabinet company was overdrawn and such checks should not have been paid. Such payments, although made when the account of the cabinet company was overdrawn, may or may not have constituted a misapplication of the funds of the bank within the meaning of the law, according to the intent with which the act was done, to be gathered from all the evidence bearing upon that subject. If the account was an active one, to which deposits were made and upon which checks were drawn almost daily and which was further affected from time to time by drafts that had been endorsed and discounted by the cabinet company being returned and charged back to their account, then the mere fact that on certain days checks were drawn and paid in excess of deposits made upon that particular day would not constitute any crime unless it should appear from all the evidence that such payments were made with the intent alleged in these counts of the indictment on the part of Mr. Haughey, and that the defendants on trial aided and abetted him in so doing and with like intent.

Eighth. The court erred in refusing to give to the jury instruction numbered ten (10) asked by the defendants, which was and is in the words and figures following, to wit:

10.

The payment of checks of the Indianapolis Cabinet Company when its account was overdrawn or the discounting of drafts drawn by it on its customers or others or of notes or acceptances given to it by its customers or others was not a criminal misapplication of
213 the funds of the bank within the meaning of this statute, even though the Indianapolis Cabinet Company was known by the president of the bank to be insolvent at the time, if in such transactions the president of the bank acted in good faith and without intent to injure or defraud the bank.

Ninth. The court erred in refusing to give to the jury instruction numbered thirteen (13) asked by the defendants, which was and is in the words and figures following, to wit:

13.

In this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National bank was largely overdrawn—that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact, and that

Mr. Haughey, as president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans by a bank, yet loans are not infrequently made by banks in that form, and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based.

Tenth. The court erred in refusing to give to the jury instruction numbered eleven (11) asked by the defendants, which was and is in the words and figures following, to wit:

11.

If upon all the evidence in the case you have a reasonable doubt as to whether in any of the instances in which Mr. Haughey, the president of the bank, is charged in the indictment with having made a criminal misapplication of the moneys of the bank,
214 he believed the Indianapolis Cabinet Company to be solvent, or that to refuse it further credit would result in loss to the bank, which might be avoided by furnishing further aid, and, acting upon such belief, did any of the acts so charged with the *bona fide* hope and intention of saving the bank from loss, and not with the intent to injure or defraud the bank, then your verdict should be not guilty as to each count charging such an instance of misapplication.

Eleventh. The court erred in refusing to give the jury instruction numbered fourteen (14) asked by the defendants, which was and is in the words and figures following, to wit:

14.

Every wrongful or even unlawful misapplication of the moneys, funds, or credits of a national bank is not criminal under the statute upon which this indictment is based; for example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association, actually paid in. If, therefore, the directors or officers of a national bank have permitted an individual or company to borrow a sum in excess of one-tenth of its capital stock actually paid in, such an act would be unlawful, but not for that reason alone criminal. In order to make the granting of such excessive loan or loans criminal there must be added an intent on the part of the officer or agent of the bank making or authorizing the loan to injure or defraud the bank. If, therefore, you should find that the indebtedness of the Indianapolis Cabinet Company at the time of the misapplication of funds alleged in any count of the indictment exceeded ten per cent. of the capital stock of the bank, the transaction would not, for this reason alone, be a criminal misapplication.

215 Twelfth. The court erred in refusing to give to the jury instruction numbered fifteen (15) asked by the defendants, which was and is in the words and figures following, to wit:

15.

The intent on the part of Mr. Haughey in the alleged misapplications of the moneys of the bank to injure or defraud the bank is an essential ingredient of the offense charged against the defendants. In determining the question, therefore, of Mr. Haughey's intent, you should take into consideration the relation he bore to this bank, both as an officer and shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank, and it is for you to say, in the light of all the evidence, whether Mr. Haughey, in letting the cabinet company have such moneys, did so with such intent. If the evidence does not satisfy you beyond a reasonable doubt of such intent, then the Government's case is not made out. In determining this question you may consider whether Mr. Haughey was in any way benefitted or hoped to be benefitted by the loans or advances to the cabinet company; and if you find from the evidence that there was no such benefit or hope thereof on the part of Mr. Haughey such fact may be considered by you in determining whether there was any such intent as is charged, and, if the making of such loans and advances was under such circumstances shown by the evidence as would injure or tend to injure Mr. Haughey, that fact may be considered in like manner and for the same purpose.

Thirteenth. The court erred in refusing to give to the jury instruction numbered eighteen (18) asked by the defendants, which was and is in the words and figures following, to wit:

216 18.

The counts of the indictment relating to misapplication charge a misapplication of the moneys of the bank. These charges of misapplication are not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled, unless it is also shown that as a result of such credit the cabinet company was enabled to and did withdraw from the bank moneys of some kind resulting in loss to the bank. Thus evidence of the giving by the cabinet company and the receiving by the bank of renewal paper upon which nothing was withdrawn from the bank would not sustain the charge of criminal misapplication of the credits of the bank.

Fourteenth. The court erred in refusing to give to the jury instruction numbered nineteen (19) asked by the defendants, which was and is in the words and figures following, to wit:

19.

Evidence has been introduced upon the trial with reference to drafts drawn by the Indianapolis Cabinet Company on the Tufts

Cabinet Company and accepted in the name of the latter company, and it is claimed on behalf of the Government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the purpose of throwing light upon the intent of the defendants and of Theodore P. Haughey in connection with the charge of wrong-doing by them in the various counts of the indictment. This evidence can only be considered by you for this purpose, as there is no charge in any count of the indictment based upon this particular transaction, and the light it may throw upon the intent of the defendants or either of them or of said Haughey must depend upon all the circumstances shown to have attended the transaction.

217 Fifteenth. The court erred in refusing to give to the jury instruction numbered forty-three (43) asked by the defendants, which was and is in the words and figures following, to wit:

43.

As you have been already told, the Government in this case is prosecuting the defendants for particular transactions charged to have been unlawful and criminal, as specifically set forth in certain specific counts of the indictment. Evidence has been introduced by the Government of other transactions between the Indianapolis Cabinet Company and the Indianapolis National bank and various other parties. This evidence has been allowed to go before you solely upon the question of intent and should be considered by you only in so far as it may tend to illustrate the intent of Mr. Haughey or of the defendants. Except for that purpose you have nothing to do with other transactions than those specifically charged and prosecuted under this indictment. Except as illustrating such intent, the question of the lawfulness or unlawfulness of such other transactions is one with which you have nothing to do.

Sixteenth. The court erred in refusing to give to the jury instruction numbered twenty (20), asked by the defendants, which was and is in the words and figures following, to wit:

20.

Some evidence has been given in this case tending to prove that the defendants, as officers of the Indianapolis Cabinet Company and some of the other corporations organized as subsidiary thereto, have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn
218 for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation by an understanding between the drawer and drawee, and if you shall find further that such drafts or paper, if placed in

the bank for discount, were in whole or in substantial part secured by bonds or other collateral or *was* of real substantial value, this fact will be a further circumstance for your consideration, tending to show the good faith of such transaction with the bank.

Seventeenth. The court erred in refusing to give to the jury instruction numbered twenty-two (22) asked by the defendants, which was and is in the words and figures following, to wit:

22.

If there is evidence sufficient to raise a reasonable doubt in your minds as to whether or not any of the notes, drafts, or acceptances which were discounted by the Indianapolis National bank or placed to the credit of the Indianapolis Cabinet Company in its account with said bank or which were given in renewal of notes or drafts which had been so discounted or credited were executed in consideration of the fact that property of the Indianapolis Cabinet Company upon which the Indianapolis National bank held a mortgage was about to be shipped from the factory of said Indianapolis Cabinet Company to the parties to said notes or drafts other than the Indianapolis Cabinet Company and in consideration of the consent of the Indianapolis National bank to such shipment and at its request for the purpose of putting it in position of a creditor of such consignee, then, as to such notes or drafts, you cannot find that they were executed without a valuable consideration or that they were accommmodation paper, and the execution of such paper and its acceptance by the bank would not be a willful misapplication of the moneys, funds, or credits of said bank.

219 Eighteenth. The court erred in refusing to give to the jury instruction numbered twenty-four (24) asked by the defendant, which was and is in the words and figures following, to wit:

24.

As to some of the counts charging a criminal misapplication of the funds of the bank by the payment of checks of the Indianapolis Cabinet Company when it is claimed that it had no funds on deposit in the bank, it is claimed by the defendants that the checks so charged to have been wrongfully paid were checks to obtain money for the pay-rolls of the cabinet company, and that it was the custom and practice of the cabinet company to make deposits at or about the time of making such checks with a view to the payment thereof. If you find from the evidence that such was the practice of the cabinet company, and that in any of the instances where it is claimed by the Government that such pay-roll checks were wrongfully paid such deposits were in good faith made in accordance with that practice and with the sanction of the president of the bank to meet such pay-roll checks, then the mere fact, if you find it to be a fact, that in some of these instances the deposits do not appear upon the books of the bank as of the same date as the checks drawn against the same, because deposits were made after three o'clock in the after-

noon or on the day before or day after or for any other reason which has been sufficiently explained in the testimony, such facts would not prove or tend to prove that the payment of such checks was a criminal misapplication of the funds of the bank.

Nineteenth. The court erred in refusing to give to the jury instruction numbered twenty-nine (29) asked by the defendants, which was and is in the words and figures following, to wit:

29.

The ninth count of the indictment charges a wilful mis-
220 application of the funds of the bank in the payment of certain checks drawn by the Indianapolis Cabinet Company on the bank on the 14th day of July, 1893, amounting to the sum of $3,467.23. The defendants claim that these checks were two in number, were given by the Indianapolis Cabinet Company to the Indianapolis National bank solely to take up in said bank two drafts theretofore drawn by said Indianapolis Cabinet Company on R. Boker & Co., of Mexico, and the American Desk & Seating Company of Chicago, which drafts had been theretofore deposited in said bank and credited to said cabinet company, had been by the bank forwarded for collection and returned unaccepted and unpaid, and that on the same day the Indianapolis Cabinet Company gave to said bank, in place of said two drafts, a new draft on the American Desk & Seating Company for the amount of the two drafts so dishonored, and that by said transactions no loss was sustained by said bank. If you find from the evidence that such were the facts and that as the result of said transaction no moneys, funds, or credits were lost to the bank, but that, as the result of the whole transaction, the bank had and held the draft of the Indianapolis Cabinet Company for the entire amount of said two claims for which the checks were given, then upon these facts no criminal misapplication of the funds of the bank is shown and the defendants are entitled to an acquittal upon this count.

Twentieth. The court erred in refusing to give to the jury instruction numbered thirty-one (31) asked by the defendants, which was and is in the words and figures following, to wit:

31.

By the eleventh count of the indictment it is charged that the moneys, funds, and credits of the bank were criminally misapplied by Mr. Haughey, the president, in the sum of $1,850 by paying and causing to be paid said sum of money out of the funds of the
221 bank when the cabinet company had no funds to its credit in the bank for the payment of the same. On behalf of the defendants it is claimed that on said day the Indianapolis Cabinet Company made a *bona fide* deposit in said bank in excess of the amount of said check to provide for said check. If you find from the evidence that such was the fact, then the payment of said check would not be a criminal misapplication of the funds of the bank.

Twenty-first. The court erred in refusing to give to the jury instruction numbered thirty-two (32) asked by the defendants, which was and is in the words and figures following, to wit:

32.

The 12th count charges a misapplication on the 12th day of June, 1893, of the funds of the bank to the amount of $1,610.72 by the payment of certain checks of the cabinet company which ought not to have been paid. It is claimed on behalf of the defendants that on that same day the Indianapolis Cabinet Company made a deposit with said bank of a draft upon the American Desk & Seating Company for $2,282.10 to provide for said check, and that said American Desk & Seating Company was then owing said Indianapolis Cabinet Company the amount of said draft. If you find from the evidence that such were the facts and that such deposit was made and said draft was received as a deposit by the bank and the cabinet company was given a credit upon the books of the bank therefor, then the payment of said check against said credit would not be a misapplication of the funds of the bank.

Twenty-second. The court erred in refusing to give to the jury instruction numbered thirty-three (33) asked by the defendants, which was and is in the words and figures following, to wit:

33.

The 13th is one of the general counts of the indictment
222 and charges a criminal misapplication of the funds of the bank in the sum of $10,106.08 on the 9th day of May and on divers times between that and the 18th day of June, 1892. The Government has elected to rely upon a transaction of May 23d, 1893, as the substantive charge in this count—that is, upon the payment of checks on that day to the amount of $1,373.35. The claim of the Government is that the defendants on that day had no funds or credits in the bank out of which said checks could be paid. The defendants, on the other hand, claim that on the 20th day of May they made a deposit in said bank of funds to the amount of $6,394.10 and received from the bank on said day a *bona fide* credit for such deposit, and they further claim that all of the checks made between said 20th and said 23d days of May, both inclusive, aggregated only $5,860.88. If you find from the evidence that such are the facts, then the payment of said checks would not be a criminal misapplication of the funds of the bank.

Twenty-third. The court erred in refusing to give to the jury instruction numbered twenty-three (23) asked by the defendants, which was and is in the words and figures following, to wit:

23.

Evidence has been introduced with reference to the value of the plant and other assets of the Indianapolis Cabinet Company. Some question has been made in the introduction of this testimony as to

what is the proper basis for the valuation of this property. So far as the evidence of values is important, it should have relation to the time during which the alleged wrongful acts charged against the defendants were committed and the time or times at which they were obtaining the money, funds, or credits from the bank, and such values should be determined with reference to all the circumstances surrounding said cabinet company and said business at those times, namely, from about the 23d day of
223 Sept., 1892, until near the time of the failure in 1893. This value is to be measured, not by what the property would bring at a forced sale under the hammer nor at a fancy price which might be placed upon it by a holder not wishing to sell. The true criterion is its market value, and "the market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of having it." In estimating its value, all the capabilities of the property and all the uses to which it may be applied or to which it is adapted are to be considered. In the language of the Supreme Court of the United States, "The inquiry in such cases must be, 'What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted—that is to say, what is it worth from its availability for valuable uses?' * * * Its capability being made thus available gives it a market value which can readily be estimated." Applying these rules and considering all the evidence on the subject which has been placed before you both by the Government and by the defendants, you will be able to arrive at a just conclusion as to the fair market value of this property during the period in controversy.

Twenty-fourth. The court erred in refusing to give to the jury instruction numbered thirty-four (34) asked by the defendants, which was and is in the words and figures following, to wit:

34.

The facts stated in the 39th count of the indictment do not sufficiently charge the defendants with the commission of any public offense, and as to this count they should be acquitted.

224 Twenty-fifth. The court erred in refusing to give to the jury instruction numbered thirty-five (35) asked by the defendants, which was and is in the words and figures following, to wit:

35.

In considering the false-entry charges in this indictment it is necessary that you shall know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of a bank of some alleged transaction which never occurred or of a transaction which did occur, but which is falsely recorded, would be a false entry; but an entry in which that

which has been done by the officers or agents of the bank is correctly set forth is not a false entry. If, therefore, you find from the evidence, for instance, with reference to the alleged false entries in the 39th and 40th counts, that the bank had actually discounted and given to the cabinet company credit for the $44,000 of paper presented by the cabinet company, and had authorized said cabinet company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry, but was and is a true entry, and the indictment, so far as based upon such entry, cannot be sustained.

Twenty-sixth. The court erred in refusing to give to the jury instruction numbered thirty-seven (37) asked by the defendants, which was and is in the words and figures following, to wit:

37.

In the 39th and fortieth counts of the indictment it is charged that Mr. Haughey, president of the bank, made or caused to be made in the Individual Ledger L, A to M, at page 931 of
225 said book, under the date of May 9, 1893, and in the account of the Indianapolis Cabinet Company, in the credit column on said page, a false entry, to wit, 44,000, which entry, it is alleged, purported to show that the Indianapolis Cabinet Company was entitled to a credit of $44,000 on that day on the books of the bank. If you find that at the date of this transaction the Indianapolis Cabinet Company had presented to Mr. Haughey drafts drawn by it and by other companies upon various companies to the aggregate amount of $44,000 for the purpose of being substituted for an obligation which the cabinet company was then under to the bank on account of an overdraft in its account and for obligations it was then under to the bank on account of drafts previously deposited by it, drawn upon customers, and for which it had received credit and which had been returned unpaid and unaccepted and were then held by the bank and were the obligations of the cabinet company to that amount, and that Mr. Haughey accepted said paper to the amount of $44,000 in lieu of such overdraft and returned drafts then held by him, and that the entry of 44,000 to the credit of the cabinet company, on page 931 of the ledger, evidenced this credit as against such overdraft and a charge then made to them to the amount of the returned drafts, and that thereby the overdraft and obligation of the cabinet company on account of the returned drafts were wiped out, and that the paper thus deposited was retained by the bank as an obligation of the various companies executing it, and the previous obligation of the cabinet company on account of the overdraft and returned drafts was relinquished, the entry thus made of 44,000 on page 931 of the ledger would not be a false entry.

Twenty-seventh. The court erred in refusing to give to the jury instruction numbered thirty-eight (38) asked by the defendants, which was and is in the words and figures following, to wit:

38.

If you find from the evidence that, the Indianapolis Cabi-
226 net Company's account in the Indianapolis National bank being overdrawn, the defendants or either of them, as officers of such cabinet company and at the request of Haughey, president of the bank, furnished to said bank bills, drafts, and notes of parties possessed of little or no means, aggregating an amount sufficient to balance and more than balance such account, which said Haughey, as president, received and placed to the credit of said cabinet company in said account, such action on the part of said Haughey giving such credit and entering the same in the books of the bank, whatever may have been his motive, was not making a false entry within the meaning of this statute.

Twenty-eighth. The court erred in refusing to give to the jury instruction numbered thirty-nine (39) asked by the defendants, which was and is in the words and figures following, to wit:

39.

If Mr. Haughey, as president of the bank, received from the cabinet company drafts, bills, or notes which by reason of the insolvency of the parties or for any other reason ought not to have been received and gave to said cabinet company credit therefor and afterwards caused an entry of such credit to be made upon the books of the bank, then whatever wrong was done in the matter by Mr. Haughey was not in causing such entry to be made, but was further back, in receiving the paper and giving the credit. Not to have made the entry after receiving the paper and giving the credit would have been to commit another wrong, since it was his duty, as president of the bank, to see that the books should speak the exact truth as to that which he had caused to be done, and, however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute.

227 Twenty-ninth. The court erred in refusing to give to the jury instruction numbered forty (40) asked by the defendants, which was and is in the words and figures following, to wit:

40.

In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the making of false entries, as charged in this indictment, it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence, beyond a reasonable doubt, that the defendants had knowledge of the making of such entries, and that they did acts aiding and abetting Mr. Haughey in making the same with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for it is not sufficient to warrant their conviction

for aiding and abetting the making of the false entry on the books unless some knowledge of or connection with the making of such false entry is brought home to them.

Thirtieth. The court erred in refusing to give to the jury instruction numbered forty-two (42) asked by the defendants, which was and is in the words and figures following, to wit:

42.

If you should find from the evidence that the Indianapolis Cabinet Company caused the paper of other persons or corporations in the form of commercial paper to be substituted for indebtedness contracted by said cabinet company to the Indianapolis National bank and for which the bank held the obligations of the cabinet company, or that such paper was put into the bank by the cabinet company for moneys of the bank loaned or paid to the cabinet company, and that the sole purpose and intent of so doing was to conceal the fact that the indebtedness of the Indianapolis
228 Cabinet Company to the bank exceeded ten per cent. of the capital stock of the bank, such facts would not of themselves warrant you in finding that the moneys so obtained were criminally misapplied, or that the defendants were guilty by reason of such transactions, nor should they be considered by you as evidence of an intent on the part of either Mr. Haughey or the defendants to misapply the funds of the bank in any of the transactions to which the counts of the indictment charging misapplications apply.

Thirty-first. The court erred in refusing to give to the jury instruction numbered forty-five (45) asked by the defendants, which was and is in the words and figures following, to wit:

45.

Not only does the law presume in favor of the defendants' innocence at the beginning of their trial, but the burden of proving their guilt rests upon the Government throughout the trial. Under no circumstances does that burden shift, nor at any stage of the case are the defendants required to prove their innocence. Unless by the evidence placed before you their guilt is established beyond a reasonable doubt, they are entitled to an acquittal, and this rule applies as well to the question of the intent with which acts were done as to the question whether they were done.

Thirty-second. The court erred in refusing to give to the jury instruction numbered forty-seven (47) asked by the defendants, which was and is in the words and figures following, to wit:

47.

In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National bank, with intent to injure and defraud the bank, wilfully misapplied the funds of the

bank, and also that with intent to defraud the bank and to
229 deceive an agent appointed or to be appointed to examine its affairs he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having, with like intent, aided and abetted said Haughey in said wrongful acts. In order to sustain this charge of aiding and abetting against the defendants the evidence must show beyond a reasonable doubt that the defendants acted in the manner with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, stood in a similar relation to the alleged crime as Mr. Haughey; that they approached it from the same direction and touched it at the same point. If, as matter of fact, in any of the transactions charged as criminal in this indictment Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then, as to that transaction, they are not guilty as charged in this indictment.

Thirty-third. The court erred in refusing to give to the jury instruction numbered forty-eight (48) asked by the defendants, which was and is in the words and figures following, to wit:

48.

In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National bank, with intent to injure and defraud the bank, wilfully misapplied the funds of the bank, and also that, with intent to defraud the bank and to deceive an agent appointed or to be appointed to examine its affairs, he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having, with like intent, aided and abetted said Haughey in said wrongful acts. In order to sustain this
230 charge of aiding and abetting against the defendants the evidence must show, beyond a reasonable doubt, that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, approached the transaction charged as a crime from the same direction and touched it at the same point as Mr. Haughey. If, as matter of fact, in any of the transactions charged as criminal in this indictment, Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then they are not guilty as charged in this indictment.

Thirty-fourth. The court erred in refusing to give to the jury instruction numbered forty-nine (49) asked by the defendants, which was and is in the words and figures following, to wit:

49.

In this case the defendants are prosecuted as aiders and abettors of Theodore P. Haughey—that is, it is charged that they aided and abetted him in the commission of the crime charged. Such being

the charge, before you find the defendants guilty you must first find from the evidence, beyond a reasonable doubt, that Theodore P. Haughey committed the offense charged in any given count of the indictment—that is, in any charge of the misapplication of the funds of the bank it must be shown to your satisfaction, beyond a reasonable doubt, 1st, that the Indianapolis Cabinet Company, at the time it obtained the money charged to have been misapplied, was insolvent; 2nd, that the money so furnished by the bank was lost; third, that there was a deliberate purpose on the part of Mr. Haughey at the time the discount was made or the money was furnished, if any was furnished, to injure or defraud the bank of such money; and, fourth, it must be further proved to your satisfaction, beyond a reasonable doubt, that in receiving and applying the money to the use of the Indianapolis Cabinet Company, if it was so received and applied, the defendants did so with a like intent.

231 Thirty-fifth. The court erred in refusing to give to the jury instruction numbered fifty-one (51) asked by the defendants, which was and is in the words and figures following, to wit:

51.

The mere discount of an unsecured note, even if the maker and the president of a bank making the discount know it is not secured, is not a crime if the maker believed that he would be able to provide for it at maturity. In order that such a transaction may constitute a crime the original intent at the time the note or other paper is discounted must be to injure or defraud the bank and the parties must believe at the time of the transaction that the party whose obligation is taken will not be able to discharge it.

Thirty-sixth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"There are some unlawful applications of the moneys, funds, and credits of a national bank which are not made criminal and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association actually paid in, and that no such association shall make any loan or discount on the security of its own capital stock or be a purchaser or holder of such shares unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specific purposes. Now,

232 if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in, or should purchase its own capital stock or real estate, contrary to the provisions of the law, such acts and expenditures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by the law for such wrongful expenditures or such unlaw-

ful use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a forfeiture of all the rights and privileges of the association and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages the association, its shareholders, or any other person may sustain in consequence of such unauthorized application."

Thirty-seventh. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, therefore, it is shown by the proof beyond a reasonable doubt that Theodore P. Haughey, as president of the Indianapolis National bank, did knowingly and wilfully misapply the moneys, funds, or credits of the bank in manner and form as charged, by cashing, discounting, and paying for the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of said bank, a large number of worthless notes, drafts, and bills of exchange known to him to be worthless, drawn by and upon various insolvent persons, firms, companies, or corporations known by him to be insolvent, and by paying out of the moneys, funds, and credits of the bank large numbers of checks in manner and form as charged, drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms, and corporations when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet
233 company, knowing it to be insolvent, without the authority of the board of directors of said bank, with intent to injure and defraud said bank, as charged, then he would be guilty of the offense charged."

Thirty-eighth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"And if the defendants, Francis A. Coffin and Percival B. Coffin, are shown beyond a reasonable doubt to have knowingly and unlawfully and with the like intent to injure and defraud said bank, as charged, aided and abetted the said Haughey, knowing him to be the president of said bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank by converting the same to the use and benefit of the Indianapolis Cabinet Company, knowing it to be insolvent, as charged, then they would be guilty of the offense charged against them."

Thirty-ninth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"On the counts for wilful misapplication the questions for you to determine are: 'Did Theodore P. Haughey, as president of the Indianapolis National bank, knowingly and unlawfully and with intent to injure and defraud said bank in manner and form as charged, wilfully misapply the moneys, funds, or credits of said bank by cashing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company, knowing it to be insolvent, out of the moneys, funds, and credits of the bank without authority from its board of directors any notes, drafts, or bills of exchange

drawn by and upon insolvent persons, firms, and companies, knowing them to be insolvent and knowing such notes, drafts, or bills of exchange to be valueless, in manner and form as charged in either count of the indictment?' If he did, he has committed the offense of wilful misapplication as charged in the count or counts
234 of the indictment now on trial relating to that subject which you find to have been so proved."

Fortieth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Did Theodore P. Haughey, as president of the Indianapolis National bank and with intent to injure and defraud said bank in manner and form as charged, unlawfully and wilfully misapply the moneys, funds, and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by the Indianapolis Cabinet Company, knowing it to be insolvent, said checks being drawn in favor of divers persons, firms, or companies, as charged, when said cabinet company had no moneys, fund, or credits on deposit against which to draw, as charged, and without authority from its board of directors? If he did, he has committed the offense of wilful misapplication as charged in the count or counts of the indictment on trial relating to that subject so far as such count or counts have been so proved."

Forty-first. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Before you can find the defendants guilty of aiding and abetting in the wilful misapplication of the moneys or funds, as charged, you must be satisfied that the cabinet company, at the time it obtained the moneys or funds charged to have been misapplied, was insolvent; that the moneys so furnished by the bank or some part of it was lost; that Haughey intended at the time the discount was made or the money was furnished to defraud the bank, as charged, and that in receiving and applying the money so furnished to the use of the cabinet company the defendants did so with a like intent."

Forty-second. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

235 "A credit upon the books of the bank obtained by the knowing and unauthorized acceptance of valueless paper or by credits fraudulently given, without some consideration supposed to be valid passing to the bank, is no credit in a legal sense, and when the funds of the bank are drawn out by checks upon such credits they are wrongfully obtained."

Forty-third. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Therefore if the Indianapolis Cabinet Company obtained credits upon the books of the bank by making and negotiating to it notes, drafts, or other paper which Haughey and the defendants at the time knew did not represent any actual value whatever, with the intent to injure and defraud the bank, such credits gave the cabinet company no right to draw against them, and the payment of checks drawn upon credits so obtained would constitute a wrongful misap-

plication of the funds of the bank used in paying such checks, if they were paid with the intention to injure and defraud the bank."

Forty-fourth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If you should find that moneys, funds, or credits have been wrongfully withdrawn from the bank by Haughey, you cannot find him guilty unless you find that they were withdrawn in manner and form as charged and with the fraudulent intent on his part to wilfully misapply the same as charged."

Forty-fifth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"In respect to each of the counts charging wilful misapplication you will inquire and determine whether the moneys, funds, or credits, or a material part of them, charged to have been misapplied were withdrawn from the bank as charged; whether they
236 were withdrawn for and applied to the use of the cabinet company as charged; whether the bank suffered loss thereby as charged; whether, if such withdrawals were made, Haughey wilfully misapplied them to the use of the cabinet company with the intent to injure and defraud the bank, as charged; and, finally, whether the defendants knowingly aided and abetted said Haughey in making such wilful misapplications with the like intent. If you entertain a reasonable doubt on any of these matters, your verdict should be for the defendants."

Forty-sixth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If Haughey and the defendants withdrew moneys from the bank for the use of the cabinet company by means of checks drawn by it on said bank when it had no funds or moneys on deposit against which to draw, if they acted in good faith, honestly believing that the cabinet company would be able to repay the same when required, they would not be guilty of the intent to defraud the bank as charged: but, on the other hand, if they acted in bad faith, and did not believe and had no reasonable ground to believe that the cabinet company could repay such overdrafts when required to do so, then they had no lawful right to make such overdrafts or allow them to be made."

Forty-seventh. The trial court erred in giving to the jury the foling as a part of his instuctions to said jury:

"An entry knowingly and purposely made on the books of the bank with intent to deceive or defraud, as charged, which represents as an actual transaction one which does not and did not exist."

Forty-eighth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Or an entry knowingly and purposely made with intent
237 to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute."

Forty-ninth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry."

Fiftieth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"But if the paper was never accepted nor discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry."

Fifty-first. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If you are satisfied that Theodore P. Haughey did knowingly and purposely make or cause to be made the false entries as charged, you cannot find the defendants guilty as aiders and abettors unless you are satisfied that they with like intent unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution."

Fifty-second. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"But if such corporations were organized by the defendants, not for the purposes of legitimate business, but as mere instru-
238 mentalities, for the criminal purpose of wrongfully and unlawfully obtaining money from the Indianapolis National bank for the use and benefit of the Indianapolis Cabinet Company and they were so used by the defendants, then the fact that such corporations were organized with legal formality would not of itself excuse the defendants if their guilt as charged is otherwise proved to your satisfaction."

Fifty-third. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"In this case, if you are satisfied that the Indianapolis Cabinet Company or any other person, firm, or corporation alleged to have been insolvent at the time charged had not sufficient property or assets to pay its debts in full when wound up, then such person, firm, or corporation was insolvent in manner and form as charged in the indictment."

Fifty-fourth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"The true criterion is its market value, and the market value of property is the price which it will bring when it is offered for sale by one who desires, but who is not obliged, to sell, and is bought by one who is under no necessity of having it. In estimating this value all the capabilities of the property and all the uses to which it might be applied must be considered. Tested by this principle, would the plant and other property of the Indianapolis Cabinet Company have sold for enough to have paid its debts in full? If not, the Indianapolis Cabinet Company was insolvent."

Fifty-fifth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"In order to make the defendants liable as aiders and abettors, as charged in the indictment, it is necessary that they should be proved to have done or said something showing their con-
239 sent to or participation in the unlawful and criminal acts of Theodore P. Haughey and contributing to their execution, as charged in the indictment."

Fifty-sixth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the innocence of Haughey or the defendants, it is your duty to do so, and in that case find the defendants not guilty."

Fifty-seventh. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"And if, after weighing the proofs in the light of the presumption I have mentioned, you impartially and honestly entertain the belief that Haughey or the defendants may be innocent of the offense charged against them, they are entitled to the benefit of that doubt, and you should acquit the defendants."

Fifty-eighth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Where the witness has a direct personal interest in the result of the suit the temptation is stong to color, pervert, or withhold the facts. The law permits the defendants at their own request to testify in their behalf. The defendant Francis A. Coffin has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

Fifty-ninth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

240 "It is further shown by the evidence that large sums of money were obtained from the bank by the Indianapolis Cabinet Company by means of notes, drafts, and bills of exchange which were wholly or partially valueless."

Sixtieth. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"It is also proven that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company, which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no moneys, funds, or credits on deposit with said bank with which to pay said checks."

Sixty-first. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"It is also shown that the cabinet company and the various corporations affiliated with it organized by the defendants were

during the whole period of time covered by the indictment insolvent."

Sixty-second. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"The evidence shows that the defendants organized a number of corporations ostensibly for the conduct of their business in this city, in Richmond, Indiana, and in the cities of Boston, New York, and London, England. These corporations are shown by the evidence to have had little or no substantial capital and to have been used as mere instrumentalities for furthering the purposes of the defendants as the corporators and owners of the Indianapolis Cabinet Company."

Wherefore said plaintiff in error, Francis A. Coffin, prays that said judgment be in all things reversed.

FRANCIS A. COFFIN,
By W. H. H. MILLER,
F. WINTER &
JOHN B. ELAM,
His Attorneys.

241 And afterwards, to wit, at the May term aforesaid of said court, on the 26th day of October, 1895, aforesaid, the following order was made by the Honorable William A. Woods, circuit judge:

IN CHAMBERS AT INDIANAPOLIS, *October 26th*, 1895.

Now, at this time, comes the above-named defendant, Francis A. Coffin, by Miller, Winter & Elam, his counsel, and also comes the district attorney of the United States for the district of Indiana, and thereupon the said defendant, Francis A. Coffin, presents to the undersigned, circuit judge above named, the record of the judgment and proceedings in the above-entitled cause, accompanied by a petition for a writ of error, an assignment of errors, and also a petition that, upon the allowance of said writ of error, the same shall operate as a supersedeas and stay of execution and of proceedings upon the judgment of the court below, and that pending the hearing of said writ of error the defendant be admitted to bail;

And the undersigned having heard and considered said petition—

It is ordered that a writ of error from the Supreme Court of the United States to said district court of the United States for the district of Indiana be, and the same is hereby, allowed from the proceedings and judgment in the district court in the above-entitled cause, and that upon and after the service of citation on the district attorney of the United States for the district of Indiana, as required by law, the defendant in said cause shall thereupon be brought before the undersigned, at his chambers at Indianapolis, Indi-

242 ana, by the marshal of the United States for said district, and upon entering into his recognizance in the penal sum of ten thousand dollars, with sureties to the approval of the undersigned, conditioned that he will be and appear in said district court of the United States for the district of Indiana on and after the filing in said court of the mandate of the Supreme Court of the United States,

and from time to time as he may be required, to answer any further proceedings and abide and perform any judgment which may be had or rendered therein in this case, and that he will abide by and perform any judgment which may be rendered or affirmed against him in the Supreme Court of the United States, and, upon the execution and acceptance of said bond, the said defendant shall be discharged from further custody under the judgment and proceedings heretofore had in this case pending the hearing of said writ of error, or until the further order of the court.

And now, it being shown to the undersigned that said citation upon said writ of error has been duly issued and served upon said district attorney, said Francis A. Coffin comes with his sureties, as hereafter named, before the undersigned and executes his bond in the penal sum of ten thousand dollars, conditioned as above required, with Hannah Herron Swift and John Roberts as sureties, who are also personally present and execute said bond; which bond and sureties are accepted and approved by the undersigned circuit judge, and it is ordered that said Francis A. Coffin be discharged from the custody of the marshal for the time and upon the terms above provided.

WM. A. WOODS,
U. S. Circuit Judge.

243 And said bond is in the words following, to wit:

Before Honorable William A. Woods, U. S. circuit judge.

UNITED STATES OF AMERICA, } ss:
District of Indiana, }

We, Francis A. Coffin and Hannah Herron Swift and John Roberts, jointly and severally acknowledge ourselves to be indebted unto the United States of America in the sum of ten thousand dollars, lawful money of the United States of America, to be levied of our and each of our goods and chattels, lands and tenements, without relief from valuation or appraisement laws, upon this condition:

Whereas the said Francis A. Coffin has sued out a writ of error from the judgment of the district court of the United States for the district of Indiana in cause No. 4926 of said court, being the United States against Francis A. Coffin, for a review of said judgment in the Supreme Court of the United States:

Now, if the said Francis A. Coffin shall be and appear in the district court of the United States for the district of Indiana on and after the filing in said court of the mandate of the Supreme Court of the United States, and from time to time thereafter as he may be required, to answer any further proceedings and abide by and perform any judgment which may be rendered or affirmed against him in the Supreme Court of the United States, and not depart said

court without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 26th day of October, A. D. 1895.

FRANCIS A. COFFIN. [SEAL.]
HANNAH H. SWIFT. [SEAL.]
JOHN ROBERTS. [SEAL.]

Taken and approved this 26th day of October, 1895, before me—

WM. A. WOODS.

244 UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

I, Noble C. Butler, clerk of the district court of the United States within and for said district, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of the United States against Francis A. Coffin as fully as the same remains upon the record and files now in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 26th day of October, 1895.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Case No. 16,091. Indiana D. C. U. S. Term No., 801. Francis A. Coffin, plaintiff in error, *vs.* The United States. Filed November 21, 1895.

Office Supreme Court U. S.
FILED.
DEC 23 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

FRANCIS A. COFFIN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
} No. 801.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

FRANCIS A. COFFIN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 801.

MOTION TO ADVANCE.

Francis A. Coffin the plaintiff in error, and Percival B. Coffin were indicted in the district court of the United States for the district of Indiana, in December, 1893, charged with aiding and abetting the president of the Indianapolis National Bank in the misapplication of the moneys, funds, and credits of the bank; were tried, found guilty, and sentenced. On writ of error this court reversed the judgment of the district court and remanded the cause with directions to grant a new trial. (156 U. S., 432.)

On the second trial the plaintiff in error was convicted and sentenced to eight years' imprisonment, and has sued out this writ of error. His codefendant was acquitted.

The plaintiff in error has been admitted to bail in the sum of $10,000, pending the decision of this court.

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The plaintiff in error has been admitted to bail in the sum of $10,000, pending the decision of this court.

The Solicitor-General respectfully moves the court to advance the case on the docket in accordance with rule 26, section 4, and set it down for hearing on such day during the present term as may be convenient to the court.

Opposing counsel suggest that if the case is advanced it be assigned for some day in March next.

Notice of this motion has been served on the counsel for the plaintiff in error, and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

FILED
FEB 25 1896
JAMES H. McKENNEY,
CLERK

—IN THE—

Supreme Court of the United States.

October Term, 1895.

No. 801.

FRANCIS A. COFFIN, *Plaintiff in Error*, *vs.* THE UNITED STATES.	Error to the District Court of the United Stated for the District of Indiana.

BRIEF FOR PLAINTIFF IN ERROR.

W. H. H. MILLER,
F. WINTER,
JOHN B. ELAM,
Attorneys for Plaintiff in Error.

F. E. ENGLE & SON, PRINT, 16 N. DELAWARE, INDIANAPOLIS.

—IN THE—

Supreme Court of the United States.

October Term, 1895.

No. 801.

FRANCIS A. COFFIN,
Plaintiff in Error,
vs.
THE UNITED STATES.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

The plaintiff in error, together with his brother, Percival B. Coffin, and one Albert S. Reed, was indicted in the United States District Court for the District of Indiana on the 21st day of December, 1893, upon the charge of aiding and abetting Theodore B. Haughey, President of the Indianapolis National Bank, in misapplying the funds of that bank, in making false entries upon its books, and in making false reports to the Comptroller, in violation of Section 5209 of the Revised Statutes.

The indictment as originally returned, consisted of fifty counts, of which those numbered from one to thirty-six, inclusive, and forty-seven, were for alleged misapplications. The counts numbered thirty-seven to forty-six, inclusive, were based upon alleged false entries upon the books of the bank and numbers forty-eight, forty-nine and fifty were based upon alleged false reports made to the Comptroller.

Of the counts for misappropriation, those numbered from thirteen to thirty-six, inclusive, were what are known as "general" counts, that is, the charge was of a misapplication of large lump sums, without any specification of a particular transaction.

A trial was had, resulting, on the 28th day of May, 1894, in a verdict of guilty against the Coffins upon all of the counts except the last four, which the prosecution had abandoned during the argument, and against Reed upon the false entry counts.

A motion in arrest of judgment was, however, sustained as to the counts from the 17th to the 36th, inclusive, and sentence was suspended upon the verdict against Reed.

Upon a writ of error sued out by the Coffins, this Court (No. 741 October Term, 1894), reversed the judgment of the District Court, and sent the case back for trial upon the remaining counts, namely, 1 to 16, inclusive, and 37 to 46, inclusive.

156 U. S. 432.

A second trial of the Coffins resulted in a verdict on October 3rd, 1895, acquitting Percival B. Coffin, and convicting Francis A. Coffin upon Counts 4, 9, 11, 12, 13, 14 and 39, being upon six counts for misapplication and one for false entries.

Upon this verdict, the District Court imposed a sentence of eight years, the sentence upon the former verdict being ten years, against the defendant Francis A. Coffin.

From the judgment and sentence this writ of error is prosecuted. The facts of the case are in substance similar to, though in detail in some things unlike, those presented upon the former hearing in this Court.

The Indianapolis National Bank suspended payment on the 25th day of July, 1893, badly insolvent. The face value of its assests at that time was about $2,100,000. Of these assets, the receiver originally scheduled as "good" a little less than $900,000, including $375,000, of government bonds to secure circulation and government deposits. He also placed $572,000 in the doubtful column, and $698,000.00 as bad. The liabilities of the bank, exclusive of circulation and government deposits, were $1,661,000.00,—including circulation and government deposits about $2,100,000.

In the column of good assets, as made up by the receiver, no part of the claim against The Indianapolis Cabinet Company is included, but he put $225,000.00 thereof in the doubtful column, and $150,000.00 in the column of bad assets. [Trans. p. 86.]

On page 87 it appears that the government claimed that the assets of the Cabinet Company were good for only $176,000.00, though the defendant claimed, and his evidence tended to prove, that the same were worth $525,000.00. One of the most earnestly contested points in the case was as to the value of these assets, and the consequent solvency

or insolvency of The Indianapolis Cabinet Company; the defendant claiming that the assets were ample to have paid the debts, in the ordinary course of business, but for the failure of the bank and the utter collapse of business throughout the country during the spring and summer of 1893.

It appears, however, that, independently of the indebtedness of the cabinet company, and saying nothing about the assets scheduled as doubtful, the bank had $548,000.00 of worthless assets.

The liabilities of the cabinet company to other parties than the bank were in the neighborhood of $40,000.00.

Theodore P. Haughey, the president of the bank, was at all times its largest stockholder, ever since its organization more than twenty-five years before its failure, and practically had charge and control of all its business. He never was in any way interested in said cabinet company, nor were the Coffins, nor any one else connected with the cabinet company, or any of its associate companies, in any way interested in the bank, or with said Haughey, in any relation whatever; nor was there any claim that Haughey had any interest in, or hope of benefit from, any transactions with the cabinet company, except as a stockholder of the bank. [Trans. pp. 94 and 95.]

The plaintiff in error was in later years the president, and always the principal manager of the cabinet company, which had been in business about thirteen years. Its headquarters and manufactory were at Indianapolis, and its business was very large, extending not only all over the United States, but in many foreign countries. It always

transacted its entire business through this bank, depositing therein all the proceeds of its business and paying all disbursement by checks thereon, deposits of money and paper being made, and checks paid, almost daily; and its indebtedness had grown, from a small amount at the time it started, to the figures above stated.

It had from time to time executed mortgages or deeds of trust to the president of the bank upon its entire property to secure its indebtedness to the bank, there being at the date of the failure in July, 1893, a mortgage for $250,000.00 to secure bonds to that amount, $247,000.00 of which were pledged to and in the possession of the bank at the time of the failure, as security for all indebtedness of the cabinet company.

A number of collateral corporations had been organized by the managers of The Indianapolis Cabinet Company for the purpose, as they alleged, of facilitating their business at Boston; New York; London; Richmond, Indiana, and some other places, and some of the loans obtained from the bank had been obtained by discounting the paper of these corporations.

On behalf of the government it was claimed that these corporations were not *bona fide* business institutions, but were corporations organized simply to aid the cabinet company in procuring larger lines of credit from the bank.

The moneys and credits obtained by The Indianapolis Cabinet Company from the bank were obtained in part upon its own notes, and in part by drafts made by it upon these collateral corporations, as well as by such corporations upon each other,

and also by drafts made by the cabinet company upon other persons and corporations with which it did business, as to the latter there being no dispute that the paper was drawn and discounted in the usual course of business, and paper of the latter kind constituted, of course, much the larger part of that discounted by the bank.

The theory of the government's case, as before stated, was that these collateral corporations, were "shams"; that much of the paper procured to be discounted for the use of the cabinet company was not *bona fide* paper; that, therefore, the moneys and credits obtained by the cabinet company by means thereof were wilfully misapplied, and that the plaintiff in error aided and abetted this misapplication; also that the entries made in the books in relation to such transactions were false entries, and that the Coffins were also guilty of aiding and abetting such false entries.

The theory of the defendants, on the other hand, was that all of the moneys, funds and credits obtained from the bank by the institutions with which they were connected were *bona fide* loans, within the competency of Mr. Haughey, as president and manager of the bank to make; that Mr. Haughey, in making such loans, and they in receiving the same, acted *bona fide*, the former with a view solely to a conservation of the interests of the bank, and they with a view to the legitimate prosecution and extension of their business, in the belief, both by Mr. Haughey and by themselves, that, by means of such loans and credits, they would be able to put the business upon such a basis as that it could and would soon commence repaying, and would ulti-

mately repay, all that it owed the bank, and that there was no intent on their part, and as they believed none on the part of the president of the bank, to defraud or commit any wrong upon the bank or upon any other party whatever.

Immediately after the failure of the bank in July, 1893, and as an incident thereto, The Indianapolis Cabinet Company failed and passed into the hands of a receiver, by whom its affairs are being settled.

That under such circumstances, following the panic of 1893, its assets should realize but a fraction of their real value, was almost a matter of course.

ERRORS RELIED UPON.

I. Upon the facts shown in the bill of exceptions no crime is shown upon which conviction could be had, and the court erred in refusing to give to the jury the 47th and 48th instructions, severally, asked (Assignments of Error 32 and 33, Trans. 157–8).

II. The fourth count of the indictment is bad, because it fails to aver that the moneys the defendants are charged with aiding and abetting Haughey in misapplying are the same moneys that he misapplied. The court, therefore, erred in refusing to give the sixth instruction requested (4th Assignment of Error, Trans. 145–6).

III. Evidence was admitted of other alleged misapplications, claimed to be criminal, than those covered by the various counts of the indictment. Plaintiff in error asked the court to instruct the jury that such evidence could be considered only upon the question of intent. (Instructions 19 and 43,

covered by Assignments of Error 14 and 15, Trans. 149–150). These, and each of them, the court erroneously refused to give.

IV. The court refused to give the 15th instruction asked by plaintiff in error (12th Assignment of Error, Trans. 149), wherein he asked that the jury be told that, in determining the intent of Haughey in the transactions alleged to be criminal, they should take into consideration Haughey's relations to the bank as stockholder, etc.; in short, whether he had any motive or interest to commit the alleged crime. This the court erroneously refused.

V. By the 13th instruction asked by plaintiff in error (Assignment of Error 9, Trans. 147), the court was asked to tell the jury that the overdrawing of its account by the cabinet company, and the permission of such over-draft by Haughey was not of itself sufficient to show any criminal act on the part of Mr. Haughey; and by the 14th instruction (Assignment of Error No. 11, Trans. 148) the court was asked to tell the jury that, while the statute forbade the loaning to one party of more than ten per cent. of the capital stock of the bank, yet that such loaning was not in itself necessarily criminal. Each of these instructions the court erroneously refused to give. Instead, he gave the jury a long statement of matters wholly irrelevant.

VI. By the 18th instruction asked by plaintiff in error (Assignment of Errors 13, Trans. 149) the court was asked to tell the jury that a renewal transaction, resulting in withdrawing no funds from the bank, did not amount to a misapplication of its funds. This was erroneously refused.

VII. By instruction No. 40, requested by plaintiff in error (Assignment of Errors 29, Trans. 156) the court was asked to tell the jury that the defendants could not be convicted as aiders and abettors in the making of a false entry unless it was shown that they had knowledge of the making of such entry. Instead of giving that, the court erroneously told the jury (51st Assignment of Errors, Trans. 163; Court's Charge, 127) that they could not be convicted unless the jury were satisfied that they unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of Haughey and contributing to their execution; not limiting such instruction to the unlawful and criminal act, for aiding which they were on trial. This instruction is also erroneous, in that it assumes that the acts of Haughey were criminal.

VIII. The court, near the end of his charge (Assignments of Error 59, 60 and 61, Trans. 164, Charge 130) attempted to state to the jury a large number of facts which it was claimed were proven beyond question. In so doing he included certain alleged facts which were in dispute, notably the alleged insolvency of the cabinet company at the date of each transaction alleged to be criminal, which was one of the most earnestly contested questions in the case. This was error.

IX. The court erred in giving to the jury the part of his instructions covered by the 55th Assignment of Error (Trans. 164; Charge, 129), because: first, it is an assumption that Haughey's acts were criminal; and, second, because it assumes that the

defendants are guilty as aiders and abettors if they consented to Haughey's acts.

X. The court erroneously instructed the jury that if Haughey and the defendants withdrew the money from the bank for the use of the cabinet company by checks, when it had no money on deposit, unless they honestly believed they could replace the same when required, they would be guilty. 46th Assignment of Errors, Trans. 162; charge, 126.

XI. The court erroneously told the jury that, unless the entry truly represents an actual, *bona fide* transaction, then it would constitute a false entry, (49th Assignment of Error, Trans. 163; charge, 127), thus giving the jury to understand that a correct entry of an actual transaction, if fraudulent or not *bona fide*, would be a false entry. The court also erroneously told the jury that, if paper left with the bank and covered by the entry of the 39th count was not actually discounted, but a mere memorandum deposit made for the fradulent purpose of enabling fictitious entries to be made, the entry of the same would be a false entry, when there was no evidence to which such instruction was applicable. (50th Assignment of Errors, Trans. 163; Charge, 127).

XII. The court erroneously overruled the motion in arrest of judgment as to the counts for misapplication, because it is not sufficiently averred in the indictment that the bank was organized before the commission of the alleged criminal acts; and, as to the false entry count, because it is not shown that the defendants acted with like intent as Haughey.

ARGUMENT.

Section 5209 of the Revised Statutes reads as follows:

"Every president, director, cashier, teller, clerk or agent of any association, who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

It is important at all times to keep in mind that the intent is, by the express words of the statute, an essential of the crime. There are offenses against federal statutes in which the intent is immaterial. The doing of the act is conclusive evidence of the crime. But such is not this case.

Whatever may have been done by Haughey, the president of the bank, or whatever may have been done by the plaintiff in error, if the intent to injure, deceive or defraud is absent, there is no violation of this statute.

It is, of course, needless to say that the statute is highly penal, and is to be strictly construed, and that the benefit of every reasonable doubt in such construction is to be given to the accused.

United States v. *Gooding*, 12 Wheat. 460;
Commonwealth v. *Bean*, 14 Gray 52;
United States v. *Cruikshank*, 92 U. S. 557.

These principles are applicable alike to the pleading (the indictment) and the proof. The crime must be specifically and definitely stated in the indictment, (*Batchelor* v. *United States*, 156 U. S. 426); and it must be fully and satisfactorily established by the evidence.

It is to be borne in mind that the plaintiff in error was in no way connected with the bank; that he occupied no trust relation toward either the bank, its stockholders or its creditors. He was simply a customer of the bank, dealing across the counter and at arms length. The law imposed on him no duty toward the bank higher or different than that which it imposed upon every other customer of the bank. Primarily, he was under no obligation to look after the interests of the bank at all. He discharged his whole duty if, looking after the interests he represented, he did not actively assist in wronging the bank.

In *The American Bell Telephone Company* v. *United States*, 68 F. R. page 542, it was held by the Circuit Court of Appeals for the First Circuit that the telephone company in no way wronged the public, in no way came short of its duty, in no way transgressed the law in that, having an application for a patent pending in the Patent Office for fourteen years upon a device for the transmission of spoken language, it failed during all that time to push its application to a final hearing and permitted the same to hang along in the office until near the expiration of another patent possessed by it, with a view to prolonging the advantage of its monopoly. And it was also held that the fact, if it were a fact, that the applicant knew that the officials of the

Patent Office were coming short of their duty, imposed on him no obligation in the premises.

Certainly, as it seems to us, the obligation of the applicant for the patent to take notice of any short-comings of public officials, in its interest, was much stronger than any obligation resting upon the customer of a bank to take note of and guard against the misapplication of the funds of the bank in his interest by its officers.

One further general observation.

In each of the counts for misapplication, upon which there was a conviction and sentence, is found precisely, or in substance the following averment:

> "That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was lost to said association."

And this averment it was necessary for the government to make and to prove. Such being the fact and the law, as heretofore stated, one of the most hotly contested questions submitted to the jury was whether the cabinet company was insolvent, and whether Mr. Haughey and the plaintiff in error knew that fact.

In this connection, therefore, a recent decision of this Court upon what constitutes insolvency, and what amounts to notice of insolvency, will be instructive.

In *The Sanford Fork & Tool Co.* v. *Howe, Brown & Co., Ltd.*, 157 U. S. 312, the appellant, an Indiana manufacturing corporation, within a few months prior to its failure, had made a mortgage to a trustee, whereby it secured the payment of debts to the amount of $69,000.00 upon which the directors of the corporation were liable as endorsers. On

These principles are applicable alike to the pleading (the indictment) and the proof. The crime must be specifically and definitely stated in the indictment, (*Batchelor* v. *United States*, 156 U. S. 426); and it must be fully and satisfactorily established by the evidence.

It is to be borne in mind that the plaintiff in error was in no way connected with the bank; that he occupied no trust relation toward either the bank, its stockholders or its creditors. He was simply a customer of the bank, dealing across the counter and at arms length. The law imposed on him no duty toward the bank higher or different than that which it imposed upon every other customer of the bank. Primarily, he was under no obligation to look after the interests of the bank at all. He discharged his whole duty if, looking after the interests he represented, he did not actively assist in wronging the bank.

In *The American Bell Telephone Company* v. *United States*, 68 F. R. page 542, it was held by the Circuit Court of Appeals for the First Circuit that the telephone company in no way wronged the public, in no way came short of its duty, in no way transgressed the law in that, having an application for a patent pending in the Patent Office for fourteen years upon a device for the transmission of spoken language, it failed during all that time to push its application to a final hearing and permitted the same to hang along in the office until near the expiration of another patent possessed by it, with a view to prolonging the advantage of its monopoly. And it was also held that the fact, if it were a fact, that the applicant knew that the officials of the

Patent Office were coming short of their duty, imposed on him no obligation in the premises.

Certainly, as it seems to us, the obligation of the applicant for the patent to take notice of any short-comings of public officials, in its interest, was much stronger than any obligation resting upon the customer of a bank to take note of and guard against the misapplication of the funds of the bank in his interest by its officers.

One further general observation.

In each of the counts for misapplication, upon which there was a conviction and sentence, is found precisely, or in substance the following averment:

> "That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was lost to said association."

And this averment it was necessary for the government to make and to prove. Such being the fact and the law, as heretofore stated, one of the most hotly contested questions submitted to the jury was whether the cabinet company was insolvent, and whether Mr. Haughey and the plaintiff in error knew that fact.

In this connection, therefore, a recent decision of this Court upon what constitutes insolvency, and what amounts to notice of insolvency, will be instructive.

In *The Sanford Fork & Tool Co.* v. *Howe, Brown & Co., Ltd.*, 157 U. S. 312, the appellant, an Indiana manufacturing corporation, within a few months prior to its failure, had made a mortgage to a trustee, whereby it secured the payment of debts to the amount of $69,000.00 upon which the directors of the corporation were liable as endorsers. On

behalf of the other creditors, the appellees, it was claimed that the mortgage was void upon the ground that it was not permissible for the board of directors of an insolvent corporation to give a preference to debts secured by the personal endorsement of the members of the board; and it, of course, became necessary for this Court to consider what constituted insolvency under the circumstances. In the course of the opinion, on page 318, Mr. Justice BREWER, speaking for this Court, says:

> "The corporation, although insolvent, within the rule which declares that insolvency exists when a debtor has not property sufficient to pay his debts, was still a going concern and intending to continue its business, and the mortgage was executed not simply to secure directors and stockholders for past indebtedness, but to induce them to procure a renewal or extension of paper of the company then maturing, or about to mature, and also to obtain further advances of credit."

And again, on page 319, the learned Justice says:

> "Can it be that, if at any given time in the history of a corporation engaged in business the market value of its property is in fact less than the amount of its indebtedness, the directors, no matter what their belief as to such value, or what their expectations as to the success of the business, act at their own peril in taking to themselves indemnity for the further use of their credit in behalf of the corporation? Is it a duty resting upon them to immediately stop business and close up the affairs of the corporation? Surely, a doctrine like that would stand in the way of almost any new enterprise. It is a familiar fact that in the early days of any manufacturing establishment, and before its business has become fully developed, the value of the plant is less than the amount of money which it has cost, and if the directors cannot indemnify themselves for continued use of their personal credit for the benefit of the corporation, many such enterprises must stop in their very beginning."

Now, while The Indianapolis Cabinet Company was not a new enterprise, yet it was, as shown by the record, a growing enterprise, and an enterprise

n which improvements, extensions and betterments had been absorbing very large sums of money, so that it had built up a very large business and was subject to a very large debt, and when its bank and itself were struck by the panic in 1893, the result was calamity,—ruin.

It seems to us that the principles stated in the Sanford Fork & Tool Company case, applied in the same liberal spirit to the transactions here under consideration, must exempt the plaintiff in error from any criminal liability. We shall have occasion, further along, to consider these principles in connection with specific transactions and specific instructions asked, given and refused.

Coming now to the discussion of particular errors, we submit:

I.

In our brief in this case upon the former hearing in this Court, at pages 25, *et seq.*, was the following discussion:

"In Northway's case, 120 U. S., on page 333, a prosecution against Northway, president of the bank, for aiding and abetting Fuller, the cashier of the bank, in a misapplication of its funds, Mr. Justice MATTHEWS, speaking for the court, says:

> "The acts charged against Fuller could only be committed by him by virtue of his official relation to the bank; the acts charged against the defendant, likewise, could only be committed by him in his official capacity."

"If this is a correct statement of the law, then each count of the indictment in the case at bar is bad because, as we have seen, neither count shows that the defendants had any relations with the bank,

and the offence of aiding and abetting could only be committed by persons having such relations.

"So far as any cases have been brought into this court, and so far as we have found cases reported in the Circuit and District Courts, all persons charged with aiding and abetting have been officers, directors or agents of the bank alleged to have been defrauded.

"Evans is shown in the statement of his case to have been a director of the Spring Garden Bank. 153 U. S.

"Potter, French and Dana are all shown in the indictments to have been officers or directors of the Maverick Bank. 56 and 57 F. R.

"And this seems to be upon good reason. It is not to be supposed that this Section 5209 was enacted for the purpose of preventing the wrecking of banks by strangers and outsiders. The dangers to banks do not lie in those quarters. So long as the officers, directors and agents of the bank are honest and faithful, there is no danger that the bank will be plundered by outsiders, in any of the ways referred to in Section 5209. The attempt to stretch the language of the section so as to reach the customers, the borrowers from the bank, who have nothing whatever to do with its management, seems to be wholly unwarranted, and this view is directly within the statement of this court in the Northway case, above quoted. In analogy to other cases, such must be the rule.

"Thus, to hold that the stranger, outside the bank counter, who borrows from officers of the bank moneys in excess of the amount they are authorized to loan him, aids and abets such officers in the mis-

application of the funds of the bank, or in any other wrongful act, seems almost an absurdity. As well say that one who buys intoxicating liquors of one who sells in violation of the law aids and abets the seller in his crime, and yet expressly the reverse has been held to be the law.

Thus, in the *State* v. *Tighan*, 50 Conn. 92, it is said:

> "It is insisted, however, that the statute which provides that 'every person who shall assist, aid, counsel, cause, hire or command another to commit any offense, may be prosecuted and punished as if he were a principal offender,' governs this case, it being contended that the person who purchases the liquor induces the seller to commit the crime of selling it and so aids and abets him in the commission of the offense. But we are satisfied that the purchaser is not an aider and abettor of the offense within the meaning of the statute. The abetting intended by it is a positive act in aid of the commission of the offense—a force, physical or moral, joined with that of the proprietor in producing it. This is clear from the context, where aiding is classed with assisting, causing, hiring and commanding. The abettor, within the meaning of the statute, must stand in the same relation to the crime as the principal—approach it from the same direction, touch it at the same point. This is not the case with the purchaser of liquor. His approach to the crime is from the other side. He touches it at wholly another point. It is somewhat like the case of a man who provokes or challenges a man to fight with him. If the other knocks him down, he has induced, but in no proper sense abetted, this act of violence. He has not contributed any force to its production. He touches the offense wholly on the other side. The purchaser of liquor, by his offer to buy, induces the seller of the liquor to make the sale; but he can not be said to assist him in it. The whole force, moral or physical, that went to the production of the crime as such, was the seller's."

The same doctrine was held by the Supreme Court of New York, in *The People* v. *Smith*, 28 Hun. 627, upon the same state of facts. (Affirmed 92 N. Y. 665).

By Section 5209, every president or cashier, who, without authority from the directors, issues or

puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance or assigns any note, draft or bill of exchange, is indictable and subject to the penalties prescribed by that section.

"The theory of this prosecution would require this Court to hold that, if the president or the cashier of the bank should make or issue any such paper whatever, any person receiving the same, knowing its character or knowing that it was accommodation paper, would be subject to indictment and punishment under that section as an aider and abbettor.

"So, as another illustration, take the case of an abortion. In Massachusetts they have a statute providing that "whoever aids in the commission of a felony or is accessory thereto before the fact, by counseling, hiring or otherwise procuring such felony to be committed, shall be punished in the manner prescribed for the punishment of the principal felon."

"*Commonwealth* v. *Adams*, 127 Mass. 15, was an indictment under this statute against Mary J. Adams for aiding, counseling and procuring such crime to be committed. Mary J. Adams was not the person upon whom the abortion was had. Will anybody contend that the person upon whom such abortion was had was subject to indictment under that statute? It seems very clear that this could not be so. In the language of the Connecticut case, she and the doctor, or the other persons implicated, approached the act in different directions and touched it at different points.

"As shown in *United States* v. *Gooding*, *supra*, aiding and abetting as used in the United States Statues "import assistance, co-operation and encour-

agement." In that very case could an indictment have been sustained against the man who used the ship as an aider and abettor of him who fitted it out, even if the proof showed it was fitted out with the expectation of such use by the second party?

"As well say that he who buys stolen property aids and abets the stealing. He may commit a crime, but it is not that crime. Aiding and abetting differ only in degree, the latter term importing encouragement, counsel, etc.—moral support.

"But both must precede or be contemporaneous with the act. The assistance, co-operation and encouragement must be with the same intent to accomplish the same end. And we insist that an act of a banker intended, however mistakenly, solely to save his bank, is not in the sense of the law aided or abetted by the act of a customer directed and intended solely to the interest of such customer. In short, under the language of this court in Gooding's case, a charge of aiding and abetting can be sustained only when a charge of combination or conspiracy could be sustained."

Referring to this discussion, in the opinion of the Court, treating the question as arising on the indictment and not on the evidence, it was said:

"It is contended that no offense is stated against the aiders and abbettors, because in none of the counts is it asserted that they were officers of the bank or occupied any specific relation to the bank which made aiding and abetting possible. The language of the statute fully answers this contention. It provides that "every president, director, cashier, teller, clerk, or agent of any association, who", etc, and adds, after defining the acts which are made misdemeanors, "that every person who with like intent aids and abets", etc. The phrase, "every person", is manifestly broader than the enumeration made in the first portion of the statute. In other words, the unambiguous letter of the

law is that every president, director, agent, etc., who commits the designated offenses shall suffer the penalties provided; and that *every person* who aids or abets such officer, etc. The argument is that no one but an officer or an agent can be punished as an aider and abettor, and hence that every person who aids and abets, not being an officer, shall go unwhipped of justice. To adopt the construction contended for would destroy the letter and violate the spirit of the law. For the letter says, "every person who aids and abets", and the proposition is that we should make it say every officer, or agent, who aids and abets. The spirit and purpose of the statute is to punish the president, cashier, officer, or agent, etc., and likewise to punish every person who aids and abets. The assertion that one who is not an officer or who bears no official relation to the bank can not, in the nature of things, aid or abet an official of a bank in the misapplication of its funds, is an argument which, if sound, should be addressed to the legislative and not the judicial department. We can not destroy the law on the theory that the acts which it forbids can not be committed. In other words, the construction which we are asked to give does not deal with the meaning of the statute, but simply involves the claim that it is impossible to prove the commission of the offense defined by the law. The question whether the proof shows the commission of an offense is one of fact and not of law."

In other words, our contention was assumed to be, in the language of this Court, that one who is not an officer, or who bears no official relation to the bank, can not, in the nature of things, aid and abet an official of a bank in the misapplication of its funds. Perhaps our language in connection with the decisions cited, justified this assumption. If so, it was broader than the view we actually entertained. It was not in the mind of the writer of the brief that one not an officer, or having no official relation to the bank, could not aid and abet under this statute. It is quite easy to imagine persons not officers, and having no official relation with the bank, yet having such relations with the officers of the bank, or having such interests with them in other enterprises as

that they might work together to the hurt of the bank for a common purpose; as, for instance, in this case if Haughey and the Coffins had been partners in an outside enterprise, or if Haughey had been a stockholder in the cabinet company and at the instance of defendants, Haughey had withdrawn the moneys from the bank and himself applied them to the outside enterprise in which he and defendants were jointly interested. In such case Haughey's act would be a complete offense independent of the collateral act of Coffin who aids and abets.

In this connection we call the attention of the Court to the paragraph of the bill of exceptions, Trans. pp. 94 and 95, reciting evidence that Haughey had no interest in the cabinet company, nor any interest in or relation to the defendants, and that neither the plaintiff in error nor any other person connected with or interested in the cabinet company, or any of the other companies connected with it, had any interest in the bank or with Haughey, of any kind whatsoever.

Our contention is, and was intended to be in our former brief, that one having to the bank, as in the case at bar, the relation only of a customer, depositor and borrower, having no interest in common with the officer charged with wrong-doing, of any character whatsoever, dealing with such officer across the counter, representing an adverse interest, could not, in any transaction between such officer and such customer, the one representing the bank, and the other the adverse interest, be guilty of aiding and abetting within the statute.

Under these circumstances, it seems to us entirely competent for the Court, without doing

violence to the language or intent of Congress, to say that, there being no common interest, no common purpose, no common end to be attained by Coffin and Haughey, it was legally impossible for the one as president of the bank to be aided and abetted in the misapplication of its funds by the other acting in the adverse interest of the cabinet company.

Nor do we think that the language of this Court above quoted, quite meets this contention, as applied to facts shown in evidence, though as applied to the indictment, where the relation of the parties do not appear, it is correct. The Court says that the language of the statute is "every person who aids or abets such officer", and further along the Court says: "We can not destroy the law on the theory that the acts which it forbids can not be committed. In other words, the construction which we are asked to give does not deal with the meaning of the statute, but simply involves the claim that it is impossible to prove the commission of the offense defined by the law."

The language of the statutes against conspiracy is and always has been that "where two or more persons conspire", etc., and yet it has been adjudged over and over again that, because of the relation existing between them, a husband and wife can not be guilty of a conspiracy.

So the language of the Judiciary Act of 1891 is broad enough to give a writ of error to the government in a criminal case, but it was held that the statute must be interpreted in the light of the common law and the writ was denied.

United States v. *Sanges*, 144 U. S. 310.

Now it does not seem to us that such decisions impeach the law, but that they simply construe it. There is, of course, always implied in every law a condition that the party to whom it is to be applied shall be in such an attitude and relation to things as that the law will be presumed to have been intended for him.

Life insurance policies usually contain a provision making them inoperative in case of suicide, and yet courts very generally hold that such a provision is inoperative where the insured commits suicide while suffering from aberration of mind. Literally this seems to vary the contract, but it is held not to be such variance, because the courts presume that it was not the purpose of the parties to include in the condition an insane suicide.

Numerous illustrations of this character might be cited, where persons by reason of their situation and relations, such as coverture, infancy, absence from the jurisdiction, etc., are excepted from literal words of statutes.

As is shown in the Connecticut case *supra*, that Court found no difficulty in holding that the relation of a buyer to a seller of intoxicants in violation of the statute was inconsistent with the idea of aiding and abetting.

And so with the case of duellists. If "A" challenges "B" to fight a duel, and they do so fight, can it be said that each aids and abets the other in the transaction? The second of each aids and abets him in the transaction. It may be that the second of each might be held to aid and abet both, because the seconds meet together and arrange the transaction. But surely no court ever held that the principals

stood to each other in the relation of aiders and abettors. They have no common purpose. They do not act with the same intent in any just use of that expression.

Take another illustration. A statute makes criminal the knowing and willful reception by an election officer of an illegal vote, and it also makes criminal the act of aiding and abetting such crime. Does the man, who, knowing that he has no right to vote, nevertheless tenders such vote to the officer, who receives the same and deposits it in the ballot box, knowing it to be an illegal vote, aid and abet such officer in the crime under the statute? We think no statute was ever so constructed.

Or, take still another illustration. The statute makes adultery a crime. "A", a married man, in violation of that statute has intercourse with "B", an unmarried woman, "A" is guilty of adultery. "B" is guilty of fornication. Was it ever held, or could it be justly held that "B" aided and abetted "A" in adultery, or that "A" aided and abetted "B" in fornication?

The statute contemplates, and the indictment charges, a completed crime on the part of the bank officer, independently of any act of the aider or abettor; that is, in the case at bar, that Haughey had violated the statute and made himself amenable to punishment for a completed offense, and that the defendants also became amenable to punishment by reason of their aiding and abetting him in committing such offense. But, as matter of fact, on the proofs and on the theory of the Government, no crime was committed except as the result of the independent acts of Haughey and the defendants. What-

ever might have been the purpose or intent of either party, no crime was committed by Haughey until the defendants presented their check and received the money. All that Haughey did in the matter amounted to nothing until the act of the defendants came in and completed the misapplication by receiving the money.

This being so, it is perfectly plain, as it seems to us, that there is no relation of principal and aider and abettor in the matter. The officer of the bank who offers, and the outsider who receives, if guilty of any crime at all, are guilty as principals. And this is exactly in line with the decision in the Connecticut and New York cases cited. The buyer of intoxicants does not aid and abet the crime committed by the seller because no crime is committed until the sale is completed. In other words, the act of the purchaser is an essential part of the offense committed by the seller.

So in the case of duellists. "A" and "B" fight a duel, in violation of law. "B" can not possibly be successfully prosecuted for aiding and abetting "A" in fighting a duel because, except by their concurrent acts, no duel is fought. "B" does not aid and abet a crime committed by "A" because the crime is not and can not, in the nature of things be committed by "A" or "B" alone.

In other words, the act of the aider and abettor is in a sense secondary and collateral to the act of the principal offender. If it is an essential constituent in the crime of the principal offender, then no crime is committed by the principal offender alone, and if this be so, then the crime of the so-called aider being an essental part of the principal offense, he is

a principal, and not an aider and abettor. His act is primary and direct, not secondary and collateral.

Hence, in the case at bar, if the act of Haughey, independently of the act of Coffin, did not make a completed crime, then Coffin did not aid and abet the crime committed by Haughey, but, if a crime was committed at all, Haughey and Coffin together as principals committed such crime. It is to be kept in mind that this statute (Sec. 5209) covers a number of offenses; applies as well to an officer who embezzles or abstracts as to one who willfully misapplies. Now, to the embezzlement or to the abstraction of the funds a third person is never an essential party; the embezzlement is complete when the embezzler withdraws the moneys and appropriates them to his own use; the abstraction, when he simply withdraws the same. And a willful misapplication may be committed by the officer alone, withdrawing the money and applying the same to his own use. But when the misapplication is to the use of a third person, then two steps are necessary to the completion of the transaction; first, the withdrawal of the money by the bank officer, and, second, the reception of the same by such third person; and only with the latter act is the misapplication complete.

So with any other offense which requires the combined action of two persons, one acting upon or with the other, it is, as we think, a contradiction in terms to say that one aids and abets the other. Thus in Mass. and N. Y. it is held that the woman is not an accomplice of the man administering the medicine in abortion. *Commonwealth* v. *Wood* 11 Gray 85, *Dunn* v. *People*, 29 N. Y. 526.

In *Watson* v. *The State*, 9 Texas Court of Appeals Reports 237, it is held that a woman who voluntarily takes medicine to produce an abortion is not an accomplice, within the meaning of the statute requiring corroboration of her testimony, citing *Rex* v. *Hargrave*, 5 C. & P. 170; *Rex* v. *Boyes*, 1 Best & S. 311; same case, 101 Eng. Com. Law 309; also *Dunn* v. *People*, 29 N. Y. C't App. Rep. 523; and *Commonwealth* v. *Wolf*, 11 Gray 85.

In *Smith* v. *State*, 13 Tex. C't App. 507, it is held that an accomplice is one who is not present at the commission of an offense, but any person who advises or agrees to the commission of an offense and who is present when the same is committed is a principal thereto, whether he aids or not in the illegal act. It is further held that the rule of evidence prescribed for accomplice testimony is applicable alike to all accessories, *particeps criminis* and principals, and to this extent the term "accomplice" embraces all such offenders, but this distinction does not do away with the other distinctions made by the law in its definitions of the character of such offenders in their relations to crime.

In *Stone* v. *The State*, 3 Tex. Ct. App. 675, it is held that betters at the game of faro, monte, pool and the like, are several, not joint offenders and are not accomplices to each other, hence the uncorroborated testimony of one of them may suffice to convict the rest.

So, in *Cross* v. *The People*, 47 Ill. 152, it is held that the word "accomplice" is so broad as to cover all persons concerned in the crime, whether as principals in the first or second degree, or mere accessories.

In *Harrington* v. *State*, 36 Ala. 236, which was an indictment against the seller of liquor for an unlawful sale of liquor to a slave, and it appeared that the master had sent the slave to the saloon to buy the liquor, it was contended that the master was an accomplice and, therefore, there could not be a conviction on his testimony uncorroborated. It was held that he was not an accomplice within the meaning of the statute, "because," it is said, "there was no community of purpose between them." That is, between him and the seller.

It is laid down in Roscoe's Criminal Evidence, Vol 1, at page 274 (8th ed.) that if the party was present when the offense was committed he is not an accessory, citing *Rex* v. *Gordon*, 1 Leach 515; 1 East Pleas of the Crown 352. In such case he should be indicted as a principal.

Regina v. *Brown*, 14 Cox. C. C. 144.

In the last cited case Frederick Brown was indicted for murder, his wife being indicted as an accessory before the fact. It was proved that the blow which proved fatal was struck within a few feet of where the wife was standing. Lord Coleridge directed the acquittal of the female prisoner, pointing out that she should have been indicted as a principal, if anything. "An accessory before the fact must be absent at the time the crime was committed, and the act must be done in consequence of some counsel or procurement of his."

It is no answer to say that to show that one is a principal in an offense, rather than an aider and abettor, does not lessen his guilt. The plain answer, of course, is that this man is charged as an aider and abettor, and if he is not guilty as such aider and

abettor, he is entitled to go acquit. As, in the case of the duel, each principal in the act is a principal in crime, but neither can be successfully prosecuted as an aider and abettor of the other in such crime, because the combined action of both was essential to the completion of the crime by either.

In this case this question is fully and fairly presented. As applicable to the evidence to which attention has already been called, we asked the court, in the 47th and 48th instructions (Assignments of Error 32 and 33, Trans. p. 157-158) to say to the jury:

> "In order to sustain this charge of aiding and abetting against the defendants the evidence must show, beyond a reasonable doubt, that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins charged as aiders and abettors stood in the same relation to the alleged crime as Mr. Haughey; that they approached it from the same direction and touched it at the same point. If as matter of fact, in any of the transactions charged as criminal in this indictment Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then as to that transaction they are not guilty as charged in this indictment."

In the 47th instruction this request is applied to the alleged willful misapplications, and in the 48th to the alleged false entries.

We do not wish to be pertinacious or to seem unreasonably persistent as to this point, but we are impressed that to hold that this statute in relation to aiding and abetting applies to parties occupying the relation of customer to the bank and to transactions between the bank and such customer, like those in the case at bar, is a construction broader than was ever intended, broader than the interests of the public demand, and fraught with most serious

danger to innocent men. Such men, carrying the weight of large business enterprises, are often unable to stop without ruin to themselves and to their creditors, including the very banks that have trusted them, are compelled to and do for a time walk upon the border line between solveney and insolvency, unable to sustain themselves except by the help of the banks, and, if the construction contended for by the Government is correct, are all the time walking in the very shadow of the penitentiary. Frequently, yes generally, such enterprises, by the help of banks, are enabled to pull through.

It seems to us that the sanction by this Court of the construction contended for by the Government would be tantamount to a declaration, that, immediately, when a business man finds he cannot meet his engagements promptly, and, in the language of the charge in this case, "when required," he must at once throw up his hands and acknowledge insolvency. We cannot believe it was the intention of congress in this statute to inaugurate such a system of bankruptcy.

Sanford Fork & Tool Case. *supra.*

II.

The fourth count of the indictment seems to us to be clearly bad for the reason that it fails to aver that the plaintiff in error aided and abetted in the misapplication of the same moneys, funds and credits which it is charged in the first part of the count were misapplied by the president of the bank. So far as appears in this count, the moneys which the plaintiff in error is alleged to have aided and abetted Theodore P. Haughey in misapplying may

have been any other moneys than those which Theodore Haughey is charged with misapplying. The language of the first part of the count, charging Haughey with the misapplication, is as follows:

"The said Theodore P. Haughey * * * * * did then and there, by virtue of his said office as president of said bank, unlawfu ly, feloniously and willfully misapply the moneys, funds and credits of said association, which were then and there under his control, with intent to convert the same to the use of the Indianapolis Cabinet Company, and to other persons to the Grand Jurors unknown, in a large sum, to wit: the sum of three thousand two hundred and seventy two dollars and twenty nine cents, by then and there paying and causing said sum to be paid", etc.

The language of the aiding and abetting paragraph is:

"That the said Francis A. Coffin, etc., * * * * did unlawfully, etc., * * * * aid and abet the said Theodore P. Haughey as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand two hundred and seventy two dollars and twenty nine cents."

The only badge of identity is that the amounts stated are the same. There is no other word of identification. It is not stated that they were the same moneys, nor is the word "said" or "aforesaid," or any other word of identification used.

If "A" were indicted for the larceny of a red steer, and it were sought to charge "B" as an accessory, or as aiding and abetting "A." in such larcency, would any one claim that an indictment that simply charged in proper legal form that "A" had stolen one red steer, the property of "C," and that "B" had aided and abetted "A" in the larceny of one red steer, the property of "C," would be sufficient? Surely, it would be necessary to aver the identity of the animal.

Or; suppose that the charge under this same section of the federal statute were that the cashier of a bank had embezzled a certain promissory note, definitely and sufficiently describing the same as a promissory note executed by "A. B." to "C. D.," bearing a given date, and payable at a given time. Would it be sufficient, in an indictment seeking to charge a third party as an aider and abettor, to allege that he aided and abetted the cashier in embezzling a note executed by the same party, bearing the same date, for the same amount, and payable at the same time? To so hold is to assume, as matter of law, or as a presumption of fact in a criminal case, that the bank could and did hold but a single note of that description. And yet such a description would be vastly more definite than the description in the case at bar. Here there is nothing to identify except the similarity of amount. In the case of the embezzlement of the note there would be identity of date, of payee, of amount, of time. Yet we think in that case it would be clearly insufficient. In the case at bar, as already stated, there is but a single badge of identification. Out of all the moneys of the bank, in this count the plaintiff in error is charged with aiding and abetting in the misapplication of $3,272.29. That every word of this aiding clause might be true, and yet the plaintiff in error have no connection whatever with the misapplication of the particular fund charged in the fourth count, is too clear for argument.

As another illustration, suppose that Haughey were indicted for embezzling fifty dollars of the moneys of the bank. Would it be a good aiding and abetting charge that Coffin had aided and abet

ted Haughey in the misapplication of fifty dollars of the moneys of said bank, without alleging that it was the *same* fifty dollars particularly charged to have been embezzled by Haughey?

But the insufficiency of the charge seems, upon its face, so plain, that illustrations cannot make it much clearer.

As showing the strictness and definiteness of statement required in criminal pleading in such cases, we call the attention of the Court to the language of this Court in Cruikshank's case, *supra*, on page 557, as follows:

> "In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' Amend. VI. In U. S. *v.* Mills, 7 Peters 142, this was construed to mean, that the indictment must set forth the offense 'with clearness and all necessary certainty to apprise the accused of the crime with which he stands charged;' and in U. S. *v.* Cook, 17 Wall. 174, that 'every ingredient of which the offense is composed must be accurately and clearly alleged.' It is an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but it must state the species; it must descend to particulars.' 1st Arch. Cr. Pr. & Pl. 291. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense and to avai. himself of his conviction or acquittal for protection against a further prosecution for the same cause, and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent, and these must be set forth in the indictment with reasonable particularity of time, place and circumstances.
>
> "It is a crime to steal goods and chattels; but an indictment would be bad that did not specify with some degree of certainty the articles stolen. This, because the accused must be advised of the essential particulars of the charge against him, and the court

must be able to decide whether the property taken was such as was the subject of larceny. So, too, it is in some States a crime for two or more persons to conspire to cheat and defraud another out of his property; but it has been held that an indictment for such an offense must contain allegations setting forth the means proposed to be used to accomplish the purpose. This, because, to make such a purpose criminal, the conspiracy must be to cheat and defraud in a mode made criminal by statute; and as all cheating and defrauding has not been made criminal, it is necessary for the indictment to state the means proposed, in order that the court may see that they are in fact illegal. State *v.* Parker, 43 N. H. 83; State *v.* Keach, 40 Vt. 118; Alderman *v.* The People, 4 Mich. 414; State *v.* Roberts, 34 Me. 32. In Maine it is an offense for two or more to conspire with the intent unlawfully and wickedly to commit any crime punishable by imprisonment in the State prison (State *v.* Roberts); but we think it will hardly be claimed that an indictment would be good under this statute, which charges the object of the conspiracy to have been 'unlawfully and wickedly to commit each and every, all and singular, the crimes punishable by imprisonment in the State prison.' All crimes are not so punishable. Whether a particular crime be such an one or not, is a question of law. The accused has, therefore, the right to have a specification of the charge against him in this respect, in order that he may decide whether he should present his offense by motion to quash, demurrer or plea; and the court, that it may determine whether the facts will sustain the indictment."

So also in the *United States* v. *Gooding*, 12 Wheat., on page 477, speaking of the Act of 1818, for the suppression of the slave trade, it is said by this Court:

"This is a penal act, and is to be construed strictly, that is, with no intendment or extension beyond the import of the words used."

In that case it was accordingly held that, under a statute denouncing as guilty of a crime any person who should fit out a ship, with intent to employ such ship in the slave trade, the crime was not made out by proof that the defendant fitted out said ship with intent that it should be employed in such trade; that

the statute was directed against the person who fitted out the vessel with intent to use the same in said trade himself, and did not cover the case of one who should fit out such vessel with the intent or purpose that it should be used by other parties.

In *The Commonwealth* v. *Bean*, 14 Gray, page 52, in an opinion written by Chief Justice Shaw, it is said:

> "If, as in civil cases, an insufficient statement of a case might be helped by a verdict, it might obviate this objection. But a different and more exact rule prevails in crimnal cases, in which it is required, as well by the common law as by the constitution, that a sufficient case must be stated to bring the accused within the law before he is called on for his answer."

We submit that, within the foregoing decisions the identification of the particular moneys in controversy is not sufficient. The case would be just as well established against plaintiff in error by the proof of a misapplication of the sum stated in one form as in another, and a conviction as to one misapplication would be no bar to a prosecution for another misapplication of a like amount.

Nor is it to be said that this question is foreclosed by reason of a failure to take advantage of the defect before verdict.

On printed page 79 of this transcript it appears that plaintiff in error, the day before the trial commenced, moved the court for leave to withdraw the plea of not guilty for the purpose of demurring to the indictment, but his motion for such leave was overruled.

So, on page 103 of the transcript, it appears that in the sixth instruction asked on behalf of defendants this defect was specifically pointed out to the court, and the court was asked to instruct the

jury that this count of the indictment charged no crime against the defendants, and that, therefore, there could not be a conviction upon the same. This instruction, also, was refused, and, as we have already seen, this was one of the counts upon which a verdict of guilty was rendered. (4th Assignment of Error Trans. p. 146th).

Nor, again, are we foreclosed upon this question because of anything heretofore decided in this case.

The sufficiency of this count of the indictment was before this Court, upon the former appeal, only as it was embraced with all the other counts of the indictment in the motion in arrest; and, if any of the other counts in the indictment before the Court were sufficient, the conclusion of this Court must have been the same, without reference to the validity or invalidity of this count. In other words, we understand the rule to be well settled that a motion in arrest will only be sustained when no count of the indictment upon which a verdict of guilty has been returned is sufficient.

III.

Nothing is better settled as a matter of practice in a trial court than that a party who asks instructions appropriate to the evidence is entitled to have them given to the jury.

Thus, in *Campbell* v. *Campbell*, 54 Wis. 90, an action for slander, wherein the defendant was charged with speaking of and concerning the plaintiff the words, "She is slow poisoning her husband," the defendant asked the court to instruct the jury that "In actions of this kind a person of bad

character was not entitled to the same measure of damages as one of good character." The court declined to give such instruction, but did tell the jury that they should consider, among other things, all the evidence on both sides touching the moral character of the plaintiff, "but," says the court, "was silent, or at least indefinite, as to what effect, if any, good character should have in determining the amount of damages to be awarded." The refusal of the instruction asked was held to be error, the court saying:

"The decisions of this court lead to the conclusion that a party has a right to a direct and positive instruction upon a point material to the issue and the evidence, if requested in time; and, if such request is refused, and the point involved therein is not covered by the general charge, or is left vague or indefinite, the judgment will be reversed."

In *Carpenter* v. *The State*, 43 Indiana 371, a trial for murder, the defendant requested an instruction setting out at considerable length his theory of the facts as developed by the evidence, and asked the court to tell the jury that, if they should find such to be the facts, their verdict should be not guilty. The trial court refused to give this instruction. The Supreme Court says:

"It is true the court had given instructions to the jury on that subject, in which the law had been correctly stated. They were merely general rules or declarations of general principles, stating nothing specific or specially applicable to the evidence before the jury. It was a case in which the defendant had a right to demand something more than a declaration of general principles of law in a charge of the court to the jury. He was entitled to a specific charge, if requested, declaring the law applicable to the facts claimed to have been proven and in relation to which material evidence had been introduced. *Morris* v. *Platt*, 32 Conn. 75. In that case, on page 82, it is said: 'Where evidence is offered by either party to prove a certain state of

facts, and the claim is made that they are proved, and the court is requested to charge the jury what the law is as applicable to them and what verdict to render, if they find them proved, the court must comply'. Whilst the failure to charge more specifically might not have been ground for a new trial in the absence of a request for a further charge, still, after the request was made, it was error to refuse it."

To the same effect is *Sailer* v. *Barnousky*, 60, Wis. 169.

In *Chapman* v. *McCormick*, 86 N. Y. 479, where counsel for one of the parties had asked further instructions immediately before the retirement of the jury, the Court of Appeals says:

"As a trial judge is bound to instruct the jury on each proposition of law submitted to him by counsel bearing upon the evidence (*Zabriskie* v. *Smith*, 13 N. Y. 322; *Foster* v. *People*, 50 id. 601), so it must be a legal right of counsel to submit such propositions (*Pennock* v. *Dialogue*, 2 Peters 15), and its denial by the court a subject of exception and review upon appeal. The judge, therefore, erred in refusing the request of counsel, and the error is fatal to the judgment unless it appears that there was no question in the case to be submitted to the jury (*People* v. *Gray*, 5 Wend. 289); or that the request came too late. * * * * I have reached this conclusion with reluctance, and with no disposition to interfere with the exercise of the large and necessary discretion entrusted to a trial judge. But a right valuable to a litigant seems to have been denied; and for this reason there should, I think, be a new trial."

In *Pennock* v. *Dialogue*, 2 Peters 1, on page 15 this question is discussed by Mr. Justice Story. On behalf of plaintiff in error in that case, it was claimed that the court had not instructed the jury with sufficient definiteness with reference to certain facts in evidence, and, speaking for the Court, the learned Justice says:

"It has been said on behalf of the defendants in error that it (the evidence) called for other and explanatory directions from the court and that the omission of the court to give them in the

charge furnishes a good ground for a reversal, as it would have furnished in the court below for a new trial. But it is no ground of reversal that the court below omitted to give directions to the jury upon any points of law which might arise in the cause where it was not requested by either party at the trial. It is sufficient for us that the court has given no erroneous directions. If either party deems any point presented by the evidence to be omitted in the charge, it is competent for such party to require an opinion from the court upon that point; if he do not, it is a waiver of it. The court cannot be presumed to do more in ordinary cases than to express its opinion upon the question which the parties themselves have raised at the trial."

So in *Livingston* v. *Maryland Insurance Co.*, 7 Cranch 506, on page 544 the same learned Justice discusses the same question. The point in issue there was whether under the evidence the jury had a right to believe that certain papers had been concealed. The Court says:

"The prayer of the plaintiffs in the fifth exception was for a direction that, under all the circumstances of the case, there was no such concealment as would avoid the plaintiffs right to recover. And if, in point of law, the plaintiffs were entitled to such direction, the court erred in their refusal, although the direction afterwards given by the court might, by inference and argument in the opinion of this court, be pressed to the same extent. For the party has a right to a direct and positive instruction; and the jury are not to be left to believe in distinctions where none exist, or to reconcile propositions by mere argument and inference. It would be a dangerous practice and tend to mislead instead of enlightening a jury."

In *The Texas & Pacific Ry.* v. *Volk*, 151 U. S. 73, this Court, speaking through Mr. Justice Gray, said:

"The omission of the court to instruct the jury upon the subject of the plaintiff's contributory negligence is not open to exception, because the bill of exceptions does not show that the defendant requested any instruction upon that subject. In England, it is misdirection, and not non-direction, which is the subject of a bill of exceptions. *Anderson* v. *Fitzgerald*, 4 H. L. Cas. 484, 499. In this country the rule is somewhat more liberal;

and the not giving an instruction upon a point in issue may be excepted to, if one was requested, but not otherwise. In a very early case, Chief Justice Marshall said: 'There can be no doubt of the right of a party to require the opinion of the court on any point of law which is pertinent to the issue, nor that the refusal of the court to give such opinion furnishes cause for an exception.' *Smith* v. *Carrington*, 4 Cranch, 62, 71. As afterwards more fully stated by Mr. Justice Story, "it is no ground of reversal that the court below omitted to give directions to the jury upon any points of law which might arise in the cause, where it was not requested by either party at the trial. It is sufficient for us that the court has given no erroneous directions. If either party deems any point presented by the evidence to be omitted in the charge, it is competent for such party to require an opinion from the court upon that point. If he does not, it is a waiver of it.' *Pennock* v. *Dialogue*, 2 Pet. 1, 15. See also *Express Co.* v. *Kountze*, 8 Wall. 342, 353, 354; *Shutte* v. *Thompson*, 15 Wall. 151, 164. A request for instructions, being necessary to entitle the excepting party to avail himself of an omission to instruct, cannot be presumed, but must affirmatively appear in the bill of exceptions."

The same doctrine is again recognized by this Court in *Northern Pacific Railroad* v. *Urlin*, 158 U. S. 271.

In *The State* v. *Banks*, 73 Missouri 592, a prosecution for murder, it is held that a defendant has a right to an instruction applicable to his theory of the defense, though the only evidence supporting such theory be his own testimony, and that be contradicted by every other witness in the case. The Court says:

"In the present instance, the defendant had testified to a state of facts, which, if true, clearly exonerated him from the charge of murder in the first decree, and fixed his offense at a lower grade of homicide; and it belongs not to the judicial province to assume that his testimony is either improbable or untrue. So far as concerned the fixing of a basis for an instruction for such lower grade of crime, his testimony was to be taken as true, as much so as if testified by the most reliable and veracious witness, neither biased by interest nor prompted by fear of punish-

ment. If it be said that this view of the law will be taken advantage of by those who are put on trial for their lives, it is only necessary to say that a witness in a criminal cause is competent, under the law, to testify to all the facts in issue; that the duty of the court to properly instruct the jury remains as heretofore, and that consideration of the inconveniences resulting from those accused being permitted to testify in their own behalf, are considerations appropriately addressed not to those who enforce, but to those who make the law. Had any other witness than the defendant himself testified that the killing was accidental, and had the testimony of such witness been at variance with that of every other witness in the case, no one could doubt the impropriety of refusing an instruction based upon the testimony of such witness. If such refusal would be improper in an instance like the one just cited, then improper also in every instance where testimony of a similar purport and effect is elicted, even from the defendant himself."

The same view is taken by the same court in *State* v. *Partlow*, 4 S. W., Rep. 14.

It being thus entirely clear that the plaintiff in error had a right to have the jury instructed specifically as to matters tending to prove his defense, let us now apply the rule to this case.

On pages 96 and 97 of the transcript, in the bill of exceptions, will be found the following:

"Be it further remembered that upon the trial the Government introduced evidence touching the business transactions generally between said bank and said cabinet company during the existence of said last-named corporation, and especially during the three years next preceding the finding of said indictment, said evidence tending to prove other misapplications of the moneys, funds and credits of said bank than those charged in the counts under which said defendant, Francis A. Coffin, was on trial, among which was evidence tending to show that on November 5th, 1892, there was discounted by said bank, at the instance of said defendant, Francis A. Coffin, a draft for $7,500, drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company, of New York, and which purported to be accepted by said Tufts Cabinet Company by the defendant, Percival B. Coffin, as secretary, and that no corporation or partnership of that name had ever existed or had any dealings with said Indianapolis Cabinet

Company, while it was claimed by said defendants, and there was evidence tending to prove that before the drawing of said draft the Indianapolis Cabinet Company had purchased a business in New York theretofore carried on by one John M. Tufts, and that it had been determined to incorporate and carry on said business under the name of the Tufts Cabinet Company, and that books of account for said business had been procured, labelled in said name, and that pending the preparation of the incorporation papers, its business was carried on in said name and goods exceeding in value the amount of said draft purchased by it from the Indianapolis Cabinet Company, and that it was not decided to abandon the incorporation of the Tufts Cabinet Company and adopt for said business the corporate name of the Indianapolis Office Furniture Company, as was in fact done, until only a few days before the drawing of said draft, and that said draft was drawn and discounted in said bank without the knowledge or consent of the defendant, Francis A. Coffin.

"There was evidence tending to prove that no business was carried on in the name of the Tufts Cabinet Company; that no books were opened up in said name, and that there was no account with the Tufts Cabinet Company on the books of the Indianapolis Cabinet Company, but that said account was placed on said books under the name of the Indianapolis Office Furniture Company; that the draft dated November 5th, 1892, drawn on the Tufts Cabinet Company was accepted by P. B. Coffin, secretary, and was renewed in February of 1893 under the same name, but that the second and all other renewals thereof was in the name of the Indianapolis Office Furniture Company, and that said New York concern had not purchased or received at the time said draft was drawn and accepted goods from the Indianapolis Cabinet Company exceeding in value $4,400."

By the 14th assignment of error (Trans. p. 149) we complain that the court refused to give the 19th instruction asked on behalf of the defendant, which is in the following words:

"Evidence has been introduced upon the trial with reference to drafts drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company and accepted in the name of the the latter company, and it is claimed on behalf of the government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the

purpose of throwing light upon the intent of the defendants and of Theodore P. Haughey in connection with the charge of wrongdoing by them in the various counts of the indictment. This evidence can only be considered by you for this purpose, as there is no charge in any count of the indictment based upon this particular transaction, and the light it may throw upon the intent of the defendants or either of them or of said Haughey must depend upon all the circumstances shown to have attended the transaction."

And by the 15th assignment of error (Trans. 150), we complain that the court refused to give to the jury the 43d instruction requested by the defendant, which is in the following words:

"As you have already been told, the Government in this case is prosecuting the defendants for particular transactions charged to have been unlawful and criminal, as specifically set forth in certain specific counts of the indictment. Evidence has been introduced by the Government of other transactions between the Indianapolis Cabinet Company and the Indianapolis National Bank and various other parties. This evidence has been allowed to go before you solely upon the question of intent and should be considered by you only in so far as it may tend to illustrate the intent of Mr. Haughey or of the defendants. Except as illustrating such intent, the question of the lawfulness or unlawfulness of such other transactions is one with which you have nothing to do."

By the foregoing extract from the bill of exceptions, it appears that the Government upon the trial in its evidence went at large into the transactions between the bank and the cabinet company during the entire existence of the cabinet company, and especially during the three years next preceding the finding of the indictment, said evidence tending to prove other misapplications of the moneys, funds and credits of the bank than those for which the defendants were upon trial. And it further appears that they especially went into the transaction known as the "Tufts Cabinet Company transaction," upon

which it was not pretended that any change for which defendants were being tried was based.

Under these circumstances, we asked the court to instruct the jury that evidence as to such transactions, apart from and collateral to the matters for which defendants were indicted, should be considered only upon the question of intent. But the court refused to give each of these instructions, but gave no instructions of this character, and in no way limited the effect of this evidence.

That this was reversible error is, we think, clear, both upon principle and authority. To hold otherwise is to license the jury sworn to try a particular charge, of which the defendant has notice in the indictment, to ransack his whole life, and, from proof that he has committed some other offense, to infer that he probably committed this particular offense. So far from this being warranted, it is held that where the question of intent is not involved, proof of other similar violations of law are not admissible for any purpose.

In *Boldt* v. *State*, 72 Wis. 7 (38 N. W. Rep. 177,) a prosecution for a violation of the excise liquor law, the Court says:

> "We have stated that the defendant was charged with a single violation of the statute in the complaint. Now, if evidence is admitted to prove several distinct offenses, it is apparent it would often work hardship and injustice to the defendant; for, while charged with the commission of but one offense, he might be tried, under such a rule for a great number of distinct and independent offenses of which he had no notice in the complaint, and had made no preparation to meet. But still the more serious objection is that the jury might find him guilty under proof of several distinct offenses, when they would not agree that the evidence was sufficient to find him guilty of any particular sale. Or, as it is well put by the Court in *State* v. *Crimmins*, 31 Kans.

376 (2 Pac. Rep. 574,) if evidence was introduced tending to prove twelve or more different offenses, the jury might find him guilty without any two of the jurors agreeing that he was guilty of any particular one of such offenses. One juror might believe that he was guilty of one offense, another juror of another, and so on with respect to all the jurors and all the offenses; each juror beliving that defendant was guilty of some one of the offenses which the evidence possibly tended to prove, but no two jurors believing that he was guilty of the same identical offense.' This, it seems to us, is a most weighty and insuperable objection to allowing evidence tending to prove several separate and distinct offenses under a complaint or information which charges the defendant with the commission of but a single one. * * * * Mr. Wharton says: 'Where a specific offense is charged, the indictment cannot be sustained by proof of a second offense, even on the same day. This results from the general principles that evidence of offenses collateral to that in the indictment cannot be received, and that the issue should be single, and should it happen that the evidence discloses several successive offenses, any one of which would sustain a conviction, the prosecution, unless the charge is for a continuous offense, must elect the offense which it will pursue; and, when this is done, proof of other offenses will be excluded under the limitations above expressed.' Sec. 404 Wharton's Crim. Ev." Also numerous other authorities.

Again, in *Fosdahl* v. *State*, 62 N. W. Rep. 185 (89 Wis.), the same court says:

"The plaintiff in error was charged with the commission of one distinct offense, namely, the selling of a pint of whiskey upon a certain day to a certain person. Upon such a charge it is well settled that the evidence of the commission of other offenses, even of a similar nature, is inadmissible. *Boldt* v. *State*, 72 Wis. 7, 38 N. W. 177, and authorities there cited. It is true that there are exceptions to the rule, such as a case where the intent with which an act is committed is in question, or where guilty knowledge must be shown, and the like. But no such fact was in issue in the present case. Such evidence is irrelevant and immaterial to the issue in the case and has no legitimate tendency to prove guilt of the offense with which the accused is charged. In the present case the State did not attempt to prove other illegal sales in making its case, but brought out the fact from defendant itself upon cross examination, and it is now claimed that it was proper cross examination. This contention cannot be sustained. Cross examination must be confined to facts relevant and material

to the case, or such as tend to test the memory of the witness or affect his credibility. This evidence comes within neither of these classes. *People* v. *Crapo*, 76 N. Y. 288. 1 Bishop Cr. Proc. 1120, 1125."

In *People* v. *Crapo*, *supra*, the prosecution was for burglary and larceny. The district attorney upon cross examination had asked the prisoner as a witness, "Were you also in 1869, along in February or March, arrested on a charge of bigamy?" An objection to this question was overruled and an exception taken. The Court of Appeals says:

"In respect to the other question (the one above quoted), we think the decision overruling the objection to it was clearly erroneous. Although the prisoner did not claim the privilege, the question was incompetent. It did not legitimately tend to impair the credibility of the prisoner as a witness and was not competent for any purpose. The discretion which courts possess to permit questions of particular acts to be put to witnesses for the purpose of impairing credibility should be exercised with great caution when an accused person is a witness upon his own trial. He goes upon the stand under a cloud; he stands charged with a criminal offense, not only, but is under the strongest possible temptation to give evidence favorable to himself. His evidence is, therefore, looked upon with suspicion, and distrust, and if in addition to this he may be subjected to a cross examination upon every incident of his life and every charge of vice or crime which may have been made against him and which have no bearing upon the charge upon which he is being tried, he may be so prejudiced in the minds of the jury as sufficiently to induce them to convict upon evidence which otherwise would be deemed insufficient. It is not legitimate to bolster up a weak case by probabilities based upon other transactions. An accused person is required to meet the specific charge made against him, and is not called upon to defend himself against every act of his life."

The Court of Appeals thereupon proceeds with the discussion and shows by Greenleaf and Phillips that the proof of such collateral facts is not allowable, either by cross examination of the defendant himself, and much less by other witnesses.

In the opinion of the Court of Appeals of New York, in *People* v. *Sharp*, 107 N. Y. 427, by Judge Peckham this subject is elaborately discussed and the purpose of, and the limitations upon, such evidence are clearly pointed out.

So in *Hargrove* v. *The State*, 26, S. W. Rep. 993, in a prosecution for murder the State was permitted, upon cross examination of the defendant as a witness in his own behalf, to ask him whether he had not been convicted in that court for the murder of another party, and he was compelled to answer the question. At the time the evidence was admitted the court stated to the jury that it was only for the purpose of affecting, if it did affect, the credibility of the defendant as a witness, but in the charge the court failed to so limit the effect of the testimony, and this was held to be reversible error, "because," says the Court, "the evidence was well calculated to prejudice the defendant by presenting him before the jury as a man whose hands were stained with another crime of the same character."

In *Oliver* v. *State*, 28 S. W. Rep. 202, the same Court (Criminal Appeals of Texas) had under consideration the judgment of conviction against the defendant for arson. The trial court permitted the defendant's step-daughter to testify to bad treatment of her by him; that he had struck her with a stick, and had driven her from his house to the house of her uncle, who gave her shelter, and for burning whose house a day or two afterwards the defendant was on trial. It was held that the evidence was admissible for the purpose of showing the motive for the burning of the uncle's house, that is, ill-will towards his step-daughter. The trial court also

on cross examination allowed the defendant to be questioned as to other offenses, and it was held that fatal and reversible error was committed in not limiting by instructions the purposes for which such testimony could be considered and excluding the idea that it was admissible for any other purpose than discrediting the witness.

So in *Coker* v. *The State*, 31 S. W. 655, the same Court held that it was fatal and reversible error for the trial court, which had admitted evidence permissible for the purpose of impeaching or discrediting a witness, to fail to limit the testimony to that specific purpose.

To the same effect are *Mask* v. *State*, 31 S. W. 408 (Tex.); *Kollock* v. *State*, 60 N. W. 817 (Wis.); *People* v. *Connelly*, 38 Pac. 42 (Cal.)

Commonwealth v. *Bradford*, 126 Mass. 42, was an indictment for arson. The fire occurred on the 14th day of February, 1878. The Commonwealth offered evidence tending to show that about seven o'clock in the evening of February 12, 1878, the defendant set the mill (the same property) on fire, which fire was discovered by a neighbor and extinguished. This evidence was objected to but was admitted as competent, the court carefully instructing the jury, as requested by the defendant, that the only use to which the jury could apply it was as to the intent with which the defendant burned the mill as charged in the indictment. The Court says:

"The evidence was competent on the question of the intent with which the defendant subsequently burned the building and committed the offense for which he was then tried. It was carefully limited to the single purpose for which it was competent. The unsuccessful attempt to do the same thing a few days before

was evidence that the burning was willful and intentional, and not the result of accident or negligence on the part of the defendant. It was sufficiently near to the time of the commission of the offense charged to justify the inference that the defendant then had a settled purpose in regard to it. It is a rule of criminal law that evidence tending to prove a similar but distinct offense for the purpose of raising an inference or presumption that accused committed the particular act with which he is charged is not admissible. But there was no invasion of this rule in the admission of this evidence. The intent and disposition with which one does a particular act must be ascertained from his acts and declarations before and at the time, and when a previous act indicates an existing purpose, which from known rules of human conduct may fairly be presumed to continue and control the defendant in the doing of the act in question, it is admissible in evidence."

The utterances of this Court upon this question are not less clear and decisive.

In *New York Mutual Life Insurance Company* v. *Armstrong*, 117 U. S., 591, a suit was brought by the assignee of a policy of life insurance obtained on the application of the assured at the instigation of the assignee, to recover of the insurers after the death of the accused, and the defendants set up that it was plaintiff's purpose in procuring the insurance to cheat and defraud defendants, and offered to show that he effected insurance on the life of the insured in other companies at and about the same time for the like fraudulent purpose. It was held that the testimony was admissible. But in the opinion of the Court, by Mr. Justice FIELD, the justification for the admission of this testimony is placed distinctly upon the ground that it tended to prove the intent or motive, which was an essential ingredient in the case. He says:

"In *Castle* v. *Bullard*, 23 How., 172, 186, where the defendants were charged with having fraudulently sold the goods of the plaintiff, evidence that they had committed similar fraudulent

acts at or about the same time was allowed, with a view to establish their alleged intent with respect to the matter in issue. The Court said: 'Similar fraudulent acts are admissible in cases of this description, if committed at or about the same time, and when the same motive may reasonably be supposed to exist, with a view to establish the intent of the defendant in respect to the matters charged against him in the declaration.' In *Lincoln* v. *Claflin*, 7 Wall., 132, an action was brought for fraudulently obtaining property, and evidence of other frauds of a like character, committed by the defendant at or near the same time, was held to be admissible. 'Its admissibility,' said the Court, 'is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in time, the inference is reasonable that they proceed from the same motive. The principle is asserted in *Cary* v. *Hotailing*, 1 Hill, 311, and is sustained by numerous authorities. The case of fraud, as there stated, is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge.' In *Butler* v. *Watkins*, 13 Wall., 456, 464, speaking on the same subject, this Court said: 'In actions for fraud large latitude is always given to the admission of evidence. If a motive exist prompting to a particular line of conduct, and it be shown that in pursuing that line a defendant has deceived and defrauded one person, it may justly be inferred that similar conduct towards another, at or about the same time, and in relation to a like subject, was actuated by the same spirit.' In *Bottomley* v. *United States*, 1 Story, 135, 144, Mr. Justice STORY held the same doctrine, and cited instances of its application. Thus, in the case of a prosecution for uttering counterfeit money, the fact that the prisoner has in his possession, or has uttered, other counterfeit money, is held to be proper evidence to show his guilty knowledge; and upon an indictment for receiving stolen goods, evidence that the prisoner had received at various other times different parcels of goods which had been stolen from the same persons is held admissible in proof of his guilty knowledge. So, on an indictment for a conspiracy to create public discontent and disaffection, proof is admissible against the prisoner that at another meeting held for an object professedly similar, at which the prisoner was chairman, resolutions were passed of a character to create such discontent and disaffection. 'In short,' said the learned Justice, 'wherever the intent or guilty knowledge of a party is a material ingredient in the issue of a case, these collateral facts, tending to establish such intent or knowledge, are proper evidence. In many cases of fraud it would be otherwise

impossible satisfactorily to establish the true nature and character of the act.' Many other authorities might be cited to the same purport."

An examination of the cases cited in the foregoing quotation will show that the admissibility of such evidence is rested distinctly upon the proposition that it tends to show the intent.

Thus, in the old case of *Cary* v. *Hotailing*, 1 Hill 311, quoted by Mr. Justice FIELD in Armstrong's case, as well as in *Lincoln* v. *Claflin*, this is the language of the Court:

"Root's testimony should have been admitted. On questions of intent to defraud other acts similar to the offense charged, done at or about the same time, or when the same motive to offend may reasonably have been supposed to have existed as that which was in existence, are admissible with a view to the *quo animo*."

Again, in the case of a conviction under this identical statute, this Court has very recently expressed the same view.

In *Allis* v. *The United States*, 155 U. S. 117, the defendant was on trial upon an indictment consisting of twenty-five counts charging false entries at different times, running from February to December. Over the objection of defendant, a witness was permitted, from an examination of the books of the bank, to testify to the condition of the defendant's private account during that whole time. There was a conviction only upon the fourteenth count, for a single false entry. It was insisted that the evidence as to other false entries than the one upon which a conviction was had ought not to have been permitted to go to the jury. This Court, speaking by Mr. Justice BREWER,, on page 119 says:

"There are two sufficient answers to these objections: first, while the defendant was found guilty only on one, he was being tried on twenty-five counts, which counts charged false entries at different times, running from February to December, and, therefore, testimony was competent as to the condition of his account stretching through the entire time; second, the *gravamen* of this offense is the false entry with intent to injure, defraud or deceive, and it is competent to show the state of defendant's account, not merely at the very day the false entry was made, but also before and after that date, for the purpose of throwing light on the intent with which it was made."

Consistently with that language, will any lawyer pretend that an instruction if requested by Allis, to the effect that the jury should consider the evidence, with relation to other false entries not involved in any of the counts of the indictment, only upon the question of intent, should not have been given, or that the refusal to give it would not have been reversible error.

If such be the rule in civil cases, if in controversies involving merely rights of property, such testimony is admissible only upon the question of intent, and must, when a proper request is made, be so limited in the instructions, surely further argument is not necessary to the proposition that the refusal to give such instructions in the case at bar was reversible error.

The defendant was in jeopardy upon this last trial on twenty-six specific charges, relating to business between the company of which he was president and the bank through which it did all its business.

If it was competent, under such circumstances, to give in evidence any and all of the transactions between those two corporations, occurring daily through a long series of years, and if in any of them

the jury should find, or should think they had found, any transaction which appeared to them to be wrong, or which had not been sufficiently explained, or to which the defendant's attention had not been specifically called, and from that they might infer his guilt of the specific charges under consideration, then it would seem that there is little use in framing such charges, and little protection in the requirement that, before a man shall be put upon trial, he shall have notice in the indictment of the precise and particular accusation which he is called upon to meet.

IV.

Closely akin to the error last discussed, namely, the refusal to give the 19th and 43d instructions, was the action of the trial court in refusing to give to the jury the 15th instruction requested, as set out in the 12th assignment of error on page 149, printed transcript. That instruction was in the following words:

"The intent on the part of Mr. Haughey in the alleged misapplications of the moneys of the bank to injure or defraud the bank is an essential ingredient of the offense charged against the defendants. In determining the question, therefore, of Mr. Haughey's intent, you should take into consideration the relation he bore to this bank, both as an officer and shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank, and it is for you to say, in the light of all the evidence, whether Mr. Haughey, in letting the cabinet company have such moneys, did so with such intent. If the evidence does not satisfy you beyond a reasonable doubt of such intent, then the Government's case is not made out. In determining this question you may consider whether Mr. Haughey was in any way benefited, or hoped to be benefited by the loans or advances to the cabinet company; and if you find from the evidence that there was no such benefit or hope thereof on the part of Mr Haughey, such fact may be considered by you in determining whether there was any such intent as charged, and, if the making of such loans

and advances was under such circumstances shown by the evidence as would injure or tend to injure Mr. Haughey, that fact may be considered in like manner and for the same purpose."

The purpose of the instruction is plain. It was that, upon the question of the alleged criminal action and intent on the part of Mr. Haughey, which it was essential to be proven before the plaintiff in error could be convicted, the jury should consider whether in the evidence there was disclosed any motive for the perpetration of the crime charged.

As we have just seen, a vast amount of testimony relating to transactions not covered by the specific counts in the indictment had been introduced by the Government, evidence competent only upon the question of intent. In the bill of exceptions (Printed Transcript, page 94) appears the following:

"Be it further remembered that there was evidence tending to prove that during all of the time covered by the transactions between said company and said bank said Haughey was the president of the bank and its largest stockholder, and that he had at no time any pecuniary interest whatever in the Indianapolis Cabinet Company or any of the other companies connected with it, and that he did not receive or expect to receive in his individual capacity any benefit whatever from any of the transactions between the bank and said cabinet company or any of the companies connected with it or any benefit therefrom, directly or indirectly, except as president and stockholder of the bank, and that neither the defendant, Francis A. Coffin, nor any other person connected with or interested in the Indianapolis Cabinet Company or any of the companies connected with it as officers, employes or stockholders had any interest in the Indianapolis National Bank as shareholder or otherwise or with said Haughey in any relation whatever."

In the instructions given by the court (Trans. p. 121) is the following:

"The statute makes it a criminal offence for the president of a national bank to willfully misapply its moneys, funds or credits. Such willful misapplication may be either for his own use or for the use and benefit of some other person or corporation other than such banking association. It is not necessary for the commission of this offense that the officer of the bank who makes such willful misapplication should derive any personal benefit or advantage from the transaction."

And again, on page 125 of the transcript, the court instructed the jury as follows:

"In determining whether they (Haughey and the defendants) had the criminal intent to deceive or defraud as charged, or whether they acted in good faith, you will take into consideration the situation of the parties, the course of business between them, as well as between the cabinet company and the bank, and all the facts and circumstances in proof before you. Before you can find the defendants guilty upon the charges contained in any count of the indictment, you must find that the moneys, funds and credits of the bank, or some material part of them, have been willfully misapplied by Theodore P. Haughey as charged, with the intent to injure and defraud as charged, and that defendants knowingly aided and abetted such willfull misapplication with like intent. You will look to all the proofs in the case in determining these questions."

This is the only instruction given by the court at all addressed to the subject matter covered by the 15th instruction requested by us, as above set forth.

In other words, the court distinctly, and in most concise and direct terms, told the jury that it was not necessary to the commission of the offense that the officer of the bank who makes a willful misapplication should derive any personal benefit or advantage from the transaction.

We do not complain that this was a misdirection, that is, we do not contend that an officer of a bank can be guilty of a misapplication of its funds only when he derives a personal benefit therefrom.

But we do contend that, while this statement of the court is correct as far as it goes, yet the defendants were entitled, in connection therewith, to have the jury told that the absence of such benefit, if shown by the evidence, that is, the absence of motive, was a proper matter for their consideration upon the qunstion of intent.

And we further insist that the right to have the jury so told was not at all met by the language of the court above quoted from page 125, that upon the question of intent the jury "should take into consideration the situation of the parties, the course of business between them, as well as between the cabinet company and the bank, and all the facts and circumstances in the case."

Nothing is better settled in criminal law than that the presence or absence of a motive is a proper subject matter of evidence on the one side or the other, and, of course, such evidence is for the consideration of the jury.

In *Commonwealth* v. *Webster*, 5 Cushing, on page 316, Chief Justice SHAW said:

> "The ordinary feelings, passions and propensities under which parties act are facts known by observation and experience; and they are so uniform in their operation that a conclusion may be safely drawn that, if a person acts in a particular manner, he does so under the influence of a particular motive. Indeed, this is the only mode in which a large class of crimes can be proved. I mean crimes which consist, not merely in an act done, but in the motive and intent with which they are done. But this intent is a secret of the heart, which can only be directly known to the Searcher of all hearts; and if the accused makes no declaration on the subject and chooses to keep his secret, which he is likely to do if his purposes are criminal, such criminal intent may be inferred, and often is safely inferred, from his conduct and external acts."

So in *United States* v. *Babcock*, 3 Dillon 581, on page 589 it is said:

"In all cases, and especially in cases dependent on circumstantial evidence, an inquiry into the motives actuating the accused is always important, because human experience shows that men do not commit crime without a motive therefor."

A very large number of cases upon this subject are collected in the American and English Encyclopedia of Law, volume 15, page 936, but the proposition that the question of motive is always important is elementary, and it can not be necessary to make further citations thereto.

The effect of the action of the trial court, in telling the jury that it was not necessary that it should be shown that Mr. Haughey received any benefit from the alleged misapplication, and his refusal to tell them that they might consider any absence of interest or hope of benefit on his part, upon the question of motive or intent, was equivalent to instructing them that such evidence was wholly immaterial, and that they need not consider it at all.

But, as we have seen, evidence of motive is never immaterial where the question of intent is involved, and we had, as we think, the right to have the attention of the jury called to this evidence, as bearing upon the question of intent. This is so held in the *State* v. *Coleman*, 20 South Carolina 441, and it necessarily follows from the decisions cited under Division II of this brief, as shown by the quotations there made.

Campbell v. *Campbell*, 54 Wis. 90, *supra*;
Carpenter v. *State*, 43 Ind. 371, *supra*;
Chapman v. *McCormick*, 86 N. Y. 479, *supra*;
Peacock v. *Dialogue*, 2 Peters 1, *supra*;
Livingston v. *Maryland Insurance Co.*, 7 Cranch 506, *supra*;

Texas and Pacific Railway v. *Volk*, 151 U. S. 73, *supra*;

State v. *Banks*, 73 Mo. 592, *supra*.

In all of these cases it is held that a party having introduced material evidence has a right to a direct and specific instruction upon the point involved, and that a failure to give such instruction is error.

Thus, in the Wisconsin case it is said: "The decisions of this court lead to the conclusion that a party has a right to a direct and positive instruction upon a point material to the issue, and the evidence, if requested in time, and if such request is refused and the point involved therein is not covered by the general charge, or is left vague or indefinite, the judgment will be reversed."

The Indiana case is equally direct and pointed.

In the Maryland Insurance Company case, this Court says: "The party has a right to a direct and positive instruction, and the jury are not to be left to believe in distinctions where none exist, or to reconcile propositions of mere argument and inference."

It will not do to say that the court did tell the jury that they were to consider all the evidence. Under the foregoing authorities, we had the right to have their attention directed to specific evidence, introduced for a specific purpose, and the refusal of the court to give such instructions can not be cured by mere generalizations.

V.

Of the same general character was the refusal of the court to give Nos. 13 and 14 of the instruct-

ions requested by plaintiff in error (Assignments of Error Nos. 9 and 11. Trans. p. 147). Instruction No. 13 reads as follows:

"In this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National Bank was largely overdrawn—that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact, and that Mr. Haughey, as president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans by a bank, yet loans are not infrequently made by banks in that form, and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based."

And No. 14 as follows:

"Every wrongful or even unlawful misapplication of the moneys, funds or credits of a national bank is not criminal under the statute upon which this indictment is based; for example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association, actually paid in. If, therefore, the directors or officers of a national bank have permitted an individual or company to borrow a sum in excess of one-tenth of its capital stock actually paid in, such an act would be unlawful, but not for that reason alone criminal. In order to make the granting of such excessive loan or loans criminal there must be added an intent on the part of the officer or agent of the bank making or authorizing the loan to injure or defraud the bank. If, therefore, you should find that the indebtedness of the Indianapolis Cabinet Company at the time of the misapplication of the funds alleged in any count of the indictment exceed ten per cent. of the capital stock of the bank, the transaction would not, for this reason alone, be a criminal misapplication."

The proposition in No. 13 was direct and simply [illegible]ly that the allowance of mere overdrafts was not of itself sufficient to show any criminal in-

tent on the part of Mr. Haughey; and, of No. 14, that, notwithstanding the statute forbids loans to any one party in excess of ten per cent. of the capital stock, yet that such loan, while unlawful, is not, for that reason alone, criminal.

It would seem that both of these propositions, which are plainly good law, should have been given directly and specifically to the jury.

Instead, however, of doing so, His Honor, the trial judge, gave to the jury the following:

"The willful and criminal misapplication of the moneys, funds and credits of a national bank by its president, as defined in section 5209, does not include every wrongful or unlawful misapplication of such moneys, funds or credits. There are some unlawful applications of the moneys, funds and credits of a national bank which are not made criminal and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation or company shall at no time exceed one-tenth of the capital stock of such association actually paid in, and that no such association shall make any loan or discount on the security of its own capital stock or be a purchaser or holder of such shares unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specific purposes. Now, if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in, or should purchase its own capital stock or real estate contrary to the provisions of law, such acts and expenditures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by the law for such wrongful expenditures or such unlawful use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a forfeiture of all the rights and privileges of the association and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages the association, its share holders or any other person may sustain in consequence of such unauthorized application."

Neither in this extract, nor anywhere else in he charge, does the court cover the ground embraced in this request as to the question of overdrafts; nor does he, either in this instruction, or anywhere else, directly tell the jury that the borrowing of an amount greater than ten per cent, of the capital stock of the bank is not, necessarily, criminal.

In an argumentive way, and mixed up with a number of other matters wholly immaterial in this case, the extract above quoted was claimed to cover the matter of the 14th instruction asked for by plaintiff in error.

What just reason was there why the court should not tell the jury in so many words that an overdraft, or the borrowing of more than ten per cent. of its capital from a national bank, was not, necessarily, criminal?

What had this jury to do with loans by the bank on the security of its own capital stock, or with the purchase and holding of the shares of such stock of the bank? Or the purchase or holding of real estate by such bank? Or with the penalties prescribed by the statute for such irregularities or violations of law?

The jury had nothing to do with any such question, and we insist the court had no right to mix up and complicate the issues which the jury had to try, and which were difficult enough, both in number and character, with such irrelevant matters.

As we have just seen, in the Maryland Insurance case, *supra.*, cited under sub-division IV of this brief, this Court has said: "The party has a right to a direct and positive instruction and the

jury are not to be left to believe in distinctions where none exist, or to reconcile propositions of mere argument and inference."

The other cases there cited are equally emphatic to the same point. Indeed, if a Court instructing a jury can complicate and cover up a single plain question with such a mass of irrelevant matter as is here done, there is no difficulty in always avoiding error, and at the same time making the instructions of none effect.

Nor is it any answer to this complaint to assert that the judge was directing his instructions only to general propositions, and that he was not making an application of the same to particular evidence. Such statement is not correct. Throughout the instructions given by the Court the theory of the Government's case is kept constantly before the minds of the jury. Instructions are given with reference to that theory, and the language of the instructions is so molded as to give the utmost effect thereto. Thus, on page 130 of the transcript, the Court says to the jury:

> "You should especially look to the interest which the respective witnesses have in the suit, or in its result. Where the witness has a direct, personal interest in the result of the suit, the temptation is strong to color, pervert or withhold the facts. The law permits the defendants at their own request to testify in their behalf. The defendant, Francis A. Coffin, has availed himself of this privilege. His testimony is before you, and you must determine how far it is credible. The deep personal interest he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

Now, we do not urge that the giving of the instruction to the jury was independent error. This

Court has said that such an instruction is, or may be, proper.

Reagan v. *United States*, 157 U. S., 301, on page 310.

But this Court has also said in the same case: "The Court should be impartial between the Government and defendant." Page 310.

If it was the right or the duty of the Court to give this instruction, in order that the jury might not give undue credit to the testimony of the defendant, then we insist that it was the right of the defendant, at the hands of an impartial Court, to have the jury cautioned that they should consider evidence of other alleged wrong doing of Haughey and defendants only upon the question of intent; that in determining Mr. Haughey's guilt or innocence in the transactions in question, they should consider whether he had any interest or motive to commit these violations of law; and that in this prosecution for a specific crime, where evidence had been allowed of transactions unlawful or irregular, but not criminal, the jury should be told directly and without circumlocution that such transactions were not criminal.

If it was the right and duty of the Court to call the especial attention of the jury to facts furnishing a motive for Mr. Coffin not to tell the truth, why was it not equally the duty of the Court, on request of Mr. Coffin, to call the attention of the same jury to the evidence showing a lack of motive for Mr. Haughey to commit these crimes? If there is any just reason for doing the one and refusing the other, it is not apparent, nor, so far, has it been suggested.

VI.

The 18th instruction requested (Assignment of Error No. 13, Trans. p. 149) was as follows:

> "The counts of the indictment relating to misapplication charge a misapplication of the moneys of the bank. These charges of misapplication are not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled, unless it is also shown that, as a result of such credit, the cabinet company was enabled to and did withdraw from the bank moneys of some kind resulting in loss to the bank. Thus evidence of the giving by the cabinet company and the receiving by the bank of renewal paper upon which nothing was withdrawn from the bank would not sustain the charge of criminal misapplication of the credits of the bank."

In the bill of exceptions, on page 96 of the transcript, near the top of the page, it is shown that the evidence tended to prove that the transactions mentioned in the ninth count of the indictment consisted solely of taking up some paper deposited by the cabinet company and substituting other paper, and on pages 90 and 91, in the bill of exceptions, it also appears that other transactions were based upon renewals of paper merely, without in any way depleting the funds of the bank.

The purpose of this 18th instruction was that the jury might be given to understand that upon such transactions no charge of criminal misapplication could be sustained. Nevertheless, the jury found the plaintiff in error guilty upon the ninth count of the indictment.

It seems to us entirely clear that he was entitled to have this 18th instruction given. The case seems to be directly within the decision of this Court in the case of *Batchelor* v. *The United States*, 156 U. S. 426. In that case, a prosecution under

this same statute, Mr. Justice Gray, speaking for the Court, discussing the indictment, says:

"Moreover, it does not allege that any sums whatever were paid by the association, or by any one else, for the discounts."

Of course, such an allegation was held to be necessary, and equally, of course, the proof of such payment was necessary, and if the transaction upon which the ninth count of this indictment was bottomed was a mere renewal, no funds being withdrawn from the bank, then there was clearly no misapplication, and the plaintiff in error certainly had a right to have the jury so informed.

VII

Instruction No. 40 requested by plantiff in error (Assignment of Error No. 29, Trans. p. 156) reads as follows:

"In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the making of false entries, as charged in this indictment, it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence, beyond a reasonable doubt, that the defendants had knowledge of the making of such entries, and that they did acts aiding and abetting Mr. Haughey in making the same, with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for it is not sufficient to warrant their conviction for aiding and abetting the making of the false entry on the books unless some knowledge of or connection with the making of such false entry is brought home to them."

The Court refused to give that instruction, but gave the following which is covered by the 51st assignment of error (Trans. p. 163, and court's charge, Trans. p. 127:)

"If you are satisfied that Theodore P. Haughey did knowingly and purposely make or cause to be made the false entries as charged, you cannot find the defendants guilty as aiders and abettors unless you are satisfied that they with like intent unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution."

What unlawful and criminal acts?

Our requests for instructions were and, under the rule had to be presented before the commencement of the argument, and while several counts for false entries were before the jury.

We asked the court to tell the jury that the Coffins could not be held as aiders and abettors in the making of the false entries charged unless it was proved that they had knowledge of the making of such entries, that is, that they were not to be held as aiding and abetting the crime of making a false entry unless they had knowledge of the making of that false entry. Instead of telling them this, the court tells the jury, immediately following his discussion of the making of false entries, that it is sufficient if they are satisfied that the defendants with like intent unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution.

We repeat the question. What unlawful and criminal acts?

Is it suficient to charge the defendants as aiders and abettors in the making of a false entry that they had knowledge of unlawful and criminal acts of Haughey in making misapplication of the funds of the bank, or of making other false entries than the one covered by the indictment?

It is to be kept in mind that at the time the instructions were given to the jury there was only a a charge of a single criminal act in connection with the making of false entries before the jury, namely, the charge covered by the 39th count. This count the Court will find upon page 46 of the transcript, and it plainly appears that this statement is correct, the only false entry recited being the entry of "44000" upon the individual ledger, as there set forth. That this was the only count for false entry before the jury is shown in the instruction of the court at the bottom of page 126 of the transcript.

When the trial commenced, the ten counts for false entries were all before the jury, but, except the 39th, all were abandoned before the close of the argument, so that, as the court said to the jury at the bottom of page 126, they had nothing to do with any other count for false entries except this one.

And yet, in the paragraph at the bottom of page, 126, the court tells the jury that Haughey is charged with having knowingly and purposely made false entries on the books of the bank, and that the defendants are charged with aiding and abetting him in making such false entry or entries. He then tells them that these entries relate to six pieces of paper, etc., and then says: "The count relating to these false entries is numbered 39," and then he reads the count.

Here, four times over, in this paragraph he gives the jury to understand that the defendants are charged with aiding and abetting Haughey in the making of numerous false entries under the 39th count, and when we asked him to instruct the jury

that the defendants are not to be found guilty of aiding and abetting in making a false entry unless it is shown that they had knowledge of such entry, he refuses to and tells the jury that it is sufficient if the defendants are shown to have consented to and participated in the unlawful and criminal acts (not "act" but "acts") of Haughey.

As before stated, if this has reference to any other unlawful and criminal act than the making of the single false entry, it is erroneous beyond question; and that it does not have reference to that single false entry is proved by the fact that no specific reference to such entry is made and that the the words "false entries" and the word "acts" are used in the plural and not in the singular, over and over again throughout the discussion of this subject.

Twice in this very paragraph excepted to, namely, in the use of the words "false entries" in the second line thereof, and in the use of the words "criminal acts of said Haughey" in next to the last line thereof, it is made plain that the court is talking about other and different criminal acts than the single false entry charged in the 39th count. Indeed, this instruction is baldly and manifestly erroneous in the fact that with a charge of but a single false entry before the jury the Court distinctly tells them that, if they are satisfied that Haughey did knowingly and purposely make or cause to be made *false entries as charged*, etc., thus giving the jury to understand that Haughey was charged with making more than one false entry, which was not true; and then going on with language leading the jury to suppose that if the defendants consented to and participated in the

"criminal acts" of Haughey ascertained, they would be guilty.

It is a monstrous proposition that defendants are to be held guilty of aiding and abetting the making of a specific false entry by proof that they consented to or participated in the unlawful or criminal acts of Haughey generally.

VIII.

The trial Court committed reversible error, not only in assuming in the instructions facts to have been proven which were in dispute, but also in directly giving to the jury, as settled facts, propositions which were in direct dispute and were the most earnestly contested of any in the case. That this is not allowable in our courts, State or Federal, is well settled. Thompson on Trials, at Section 2295, says:

> "It is error for the Judge in instructing the jury to assume the existence of material facts which are in issue by the pleadings and which are controverted upon the evidence."

To this proposition very numerous authorities, State and Federal, are cited, among the latter being

New Jersey Life Ins. Co. v. *Baker*, 94 U. S., 610;

Gladmon v. *Railroad Company*, 15 Wall., 401.

We are not unaware of the rule that permits a Federal Judge to comment upon the testimony, and it has sometimes been held that an expression of an opinion thereon is not erroneous, but this opinion must not go so far as to state or assume a contested matter to be a fact. The same author, at Section 2290, lays down the rule with reference to this subject as follows:

"In Federal Courts, where, as elsewhere seen, the English rule, which permits the judge to give his opinion upon the weight and bearing of the evidence, prevails, the following expression of a judge in an early case no doubt indicates the correct rule of practice: 'In summing up a case to a jury many facts are often so clearly proven, or remain uncontested, that the judge assumes them as a basis of argument without suggesting to the jury their known and unquestionable right that they are to determine as to the truth of the facts alleged. But an ultimate reference to the opinion of the jury as to any such facts is always understood to be implied. If the Court in their direction should undertake to give a deciddd opinion as to the truth of an alleged fact which is contested, it would undoubtedly be wrong from its probable influence on the jury, though the right of the jury, notwithstanding such direction, would remain unimpaired.' *Nason* v. *United States*, 1 Gallison, 53, 55."

Directly in line with this is the declaration of this Court, speaking through Mr. Justice FIELD, in *Insurance Company* v. *Foley*, 105 U. S. 353, as follows:

"No instructions should be given which thus assumes as matter of fact that which is not conceded or established by uncontradicted proof. *New Jersey Mutual Life Insurance Co.* v. *Baker*, 94 U. S. 610."

It is true this declaration was made with reference to a request for an instruction, as was also the case in the decisions cited in 94th United States, and in 15th Wallace. But the principle in either case is the same, The instruction in each case was properly refused because, as Mr. Justice FIELD says, the court has no right to give an instruction which assumes facts about which there is dispute.

That such is the well established rule in the state courts, the decisions cited in Thompson on Trials very clearly prove. It is certainly needless to repeat those citations here.

Now, let us apply this rule of law to the parts of the instructions given by the court, covered by

the 59th, 60th and 61st assignments of error (Trans. p. 164).

In order that the Court may have distinctly presented before it the parts of the instructions covered by these exceptions and assignments of error, we herewith present the entire paragraph in which the passages occur, the three passages upon which error is so assigned being in italics. The trial court had nearly completed his instructions, and, as we suppose is allowable for the purpose of aiding the jury, undertook, before concluding, to relieve the jury from any inquiry as to certain matters which were undisputed or beyond doubt had been proven. On page 130 of the transcript he says:

"The evidence in the case shows that the offenses charged in the indictment, if committed at all, were committed in the State of Indiana, and within the jurisdiction of the court. It is shown that Theodore P. Haughey was, during the period of time covered by the indictment, the president of the Indianapolis National Bank; that said bank was a national bank, duly organized under the national banking laws, and was engaged in the business of banking during the period of time covered by the indictment, and that it had an authorized capital stock of three hundred thousand dollars actually paid in. It is also shown that Theodore P. Haughey as such president had the entire custody, control and management of the affairs of the bank, and that the directors of the bank gave him no authority to do or commit the various criminal acts charged against him in the indictment. *It is further shown by the evidence that large sums of money were obtained from the bank by the Indianapolis Cabinet Company by means of notes, drafts and bills of exchange which were wholly or partidlly valueless.*

It is also proven that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company which were presented to and cashed by the bank out of its moneys and funds, when said cabinet company had no moneys, funds or credits on deposit with said bank with which to pay said checks. The evidence tends to show that the defendant Francis A. Coffin was responsible for the drawing and presenta-

tion of such checks. *It is also shown that the cabinet company and the various corporations affiliated with it organized by the defendants were, during the whole period of time covered by the indictment, insolvent;* and the evidence tends to show that the defendants as well as Theodore P. Haughey had knowledge of such insolvency. The evidence shows that the defendants organized a number of corporations, ostensibly for the conduct of their business in this city, in Richmond, Indiana, and in the cities of Boston, New York and London, England. These corporations are shown by the evidence to have had little or no substantial capital and to have been used as mere instrumentalities for furthering the purposes of the defendants as corporators and owners of the Indianapolis Cabinet Company. It will be for you to determine whether they were organized and conducted as legitimate corporations, or whether they were intended to be used as instrumentalities to more sucsessfully obtain moneys, funds and credits from the Indianapolis National Bank. It is claimed by the Government that these corporations were merely colorable, nothing more than names, and were organized as devices to enable the defendants to obtain money from the bank for the use of the cabinet company. The proofs seem to me to support this contention.

Now, with reference to these instructions, we submit that the matters embraced in the parts excepted to were all matters in dispute under the pleadings and actually contested in the evidence. This was true of the matters covered by the 59th and 60th assignments of error, and it was most emphatically true as to the part of the instructions covered by the 61st assignment.

As we have in the former part of this argument shown, it is averred in each count of the indictment for misapplication that at the time of such alleged misapplication the Indianapolis Cabinet Company was insolvent, and it was necessary that such averment should be made. That averment the plea of not guilty put in issue. Upon the issue thus made a very large part of the testimony on the one side and the other was introduced.

On page 123 of the transcript, near the bottom, the Court says to the jury:

"Before you can find the defendants guilty of aiding and abetting in the willful misapplication of the moneys or funds as charged, you must be satisfied that the cabinet company at the time it obtained the moneys or funds charged to have been misapplied was insolvent."

On page 128, in the two paragraphs near the middle of the page, the Court attempts to give to the jury instructions as to what constitutes insolvency. In the first paragraph of his instructions he tells the jury:

"You are the sole judges of the facts and of what is proved, and any statements of fact made by the Court are not controlling upon you. Such statements are intended to invite your attention to the matters of fact which the Court deems important, and not for the purpose of controlling your judgment."

These are the only statements in the entire charge, preceding the paragraph embracing the assignments of error 59, 60 and 61, touching the subject matter of insolvency.

On the other hand, in the bill of exceptions, on page 87, it is stated that

"It was claimed on behalf of the defendant, Francis A. Coffin, who was an officer of said Indianapolis Cabinet Company, and had been such during all the period covered by the indictment, that the assets of said corporation were of a value of over five hundred and twenty-five thousand dollars, and that at the date of each transaction named in the indictment such assets were adequate to the payment of its debts, and there was evidence tending so to prove."

Again, on page 93, in the paragraph commencing near the middle of the page, the bill of exceptions recites that the defendants introduced evidence tending to prove that between the 1st day of July, 1892, and the failure of the bank, the assets of the

Indianapolis Cabinet Company were increased to at least five hundred thousand dollars.

So in the paragraph commencing near the bottom of page 93, and extending on page 94, it is recited that the evidence tended to prove that the business and assets of the cabinet company were increasing, and that the plant being substantially completed and the business established, by continuing to loan it the money, the company would be enabled to discharge all of its indebtedness to the bank within a reasonable time, and that this was known to said Haughey.

Of course, the bill of exceptions shows that the Government claimed and introduced evidence tending to prove that at the time of the failure of the bank, in the summer of 1893, the Indianapolis Cabinet Company was insolvent. But the Court will look in vain in the bill of exceptions for any statement that there was any direct evidence tending to prove that at each of the times when the alleged misapplications were made the cabinet company was insolvent. The nearest approach to anything of this kind is found in the following paragraph, near the bottom of page 94, to wit:

"There was evidence tending to prove that Theodore P. Haughey and Francis A. Coffin knew and believed, as far back as the year 1889, that said Indianapolis Cabinet Company was insolvent and unable to pay its debt to said bank, and that there was no reasonable expectation of said cabinet company being able to pay its debt to the Indianapolis National Bank."

This, however, is with reference to a specific date only. But granting, for the sake of argument, that it amounts to a recital that the evidence tended to show that for three years prior to the finding of this indictment the cabinent company was insolvent,

what is the effect? It is simply, as already stated, that the question of the insolvency of this company was a contested issue, vital to the determination of the case; and the court had no right, as he did do in the passage covered by the 61st assignment of error, to take this question from the jury.

Let us look at the paragraph in which the matter covered by this assignment is found a little more closely, and it will be seen that the language complained of was not used inadvertently; or without being carefully measured.

As already stated, the court was attempting to eliminate, from the issues to be determined by the jury, facts which were uncontested and which, therefore, might be accepted as facts. And what is the character of the catalogue of such facts which he makes? He gives to the jury as such uncontested facts the following:

1st. That the offenses, if committed at all, were committed in the state of Indiana;

2d. That during the period covered by the indictment Theodore P. Haughey was president of the Indianapolis National Bank;

3d. That said bank was a national bank, duly organized and engaged in the business of banking;

4th. That it had an authorized capital stock of three hundred thousand dollars;

5th. That said Haughey as president had the entire custody, control and management of the affairs of the bank;

6th. That the directors of the bank gave him no authority to do or commit the various criminal acts charged in the indictment;

7th. That large sums of money were obtained

from the bank by the cabinet company by means of paper wholly or partially valuless;

8th. That various sums of money were obtained from the bank by means of checks of the cabinet company presented and cashed, when it had no money, funds or credits on deposit;

9th. That the evidence *tended to show* that the defendant, Francis A. Coffin, was responsible for the drawing and presentation of such checks;

10th. That it is shown (not that the evidence tended to show) that the cabinet company and the various corporations affiliated with it were, during the whole period covered by the indictment, insolvent;

11th. That the evidence *tended to show* that the defendants, as well as Theodore P. Haughey, had knowledge of such insolvency;

12th. That the evidence showed that the defendants organized a number of corporations ostensibly for the conduct of their business in Richmond, Boston, New York and London;

13th. That the evidence showed that these corporations had little or no substantial capital;

14th. That they were used as mere instrumentalities for furthering the interests of the defendants as the corporators and owners of the cabinet company.

This is the catalogue as made. It will be seen that this issue of insolvency, with one or two other contested issues, as before stated, the Court embraced in a list of matters given to the jury, almost at the close of the charge, as facts about which they need not concern themselves.

And to emphasize the fact that he intended that they should understand that this issue as to insol-

vency of the cabinet company should be so accepted, we call the attention of the Court to the fact that in the very same sentence he makes the distinction between what is "shown" and what the evidence "tends to show" by adding, after stating as a fact that the corporation was insolvent, that "the evidence tends to show that the defendants, as well as Theodore P. Haughey, had knowledge of such insolvency."

The same distinction is also made in the sentence immediately preceding, thus showing, as already stated, that this language was not used inadvertently, but that the deliberate purpose of the court was to give the jury to understand that the insolvency of this corporation, at the time of each of these tranactions under investigation, was an established fact.

The very classificatian is in itself a circumstance strongly supporting this contention. *Noscitur a sociis* is a maxim no less significant in legal construction than in morals, and applied to this classification, does and can mean nothing less than that it was the purpose of the court that the jury should accept the insolvency of this corporation as an undisputed fact, of the same character as the organization of the bank, etc.

Nor will it do to say that in the beginning and again near the end of his charge the court told the jury that they were the exclusive judges of the facts. Such a general statement, in a long charge, covering, independently of the seventeen counts of the indictment which were read as a part of the charge, thirteen pages of this transcript, and whose reading consumed more than an hour of time,

is of no significance as against this direct, specific statement of a fact as an uncontested fact at the close of the instructions. Indeed, in connection with the instructions given by the court as to what would constitute insolvency, on page 128 of the transcript, the jury might well suppose that the question of insolvency was a question of law, or at least of mixed law and fact, upon which they were bound to take the statement of the court.

The last two sentences of the paragraph in which this classification of uncontested facts occurs would lead the jury to make a distinction between what was stated by the court as uncontested facts and what he intended merely as an expression of opinion. In these two sentences, page 131, he says:

"It is claimed by the government that these corporations were merely colorable, nothing more than names, and were organized as devices to enable the defendants to obtain money from the bank for the use of the cabinet company. *The proofs seem to me to support this contention.*"

There was an expression of the court's views as to the evidence. That was an opinion, and the jury would naturally, inevitably as it seems to us, apply to that and kindred statements the sentences in the next paragraph:

"With you, and not with the court, rests the responsibility of finding and determining the facts. The views of the court upon questions of fact are not controlling on you."

But the views of the court upon questions of facts, as shown by this illustration, are very different from an enumeration and cataloguing of facts as uncontested, as hereinbefore set forth.

After such a classification, no juror would think of inquiring whether the bank had been shown to be a national bank; whether the offense was committed in the State of Indiana; whether the capital of the bank was $300,000; whether Haughey was shown to be president of the bank; and no more would he think of treating as open the question whether this corporation was insolvent at the time of each of the alleged wrongful acts; though he might very well say, "I am not prepared to find that these corporations were merely colorable, as that question, while expressing his opinion, the judge has left open for our consideration."

IX.

The court below committed error in giving the part of his instructions covered by the 55th assignment of error (Trans. p. 164). The passage excepted to and assigned as error is as follows:

"In order to make the defendants liable as aiders and abettors as charged in the indictment, it is necessary that they should be proved to have done or said something showing their consent to *or* participation in the unlawful and criminal acts of Theodore P. Haughey and contributing to their execution as charged in the indictment."

This passage is found in the charge on page 129, near the top, and we think it is erroneous for two reasons:

1st. Because it is a plain, bald assumption that Theodore P. Haughey had committed criminal acts.

The acts of Thoodore P. Haughey are not spoken of, as will be observed, as the "alleged criminal acts," or "the acts charged to be criminal acts," but acts to be accepted and treated by the jury as criminal acts.

This assumption, and the declaration based upon it in this instruction, were peculiarly dangerous and damaging to the defendants by reason of the fact that it was well-known to the jury, and to everybody else, that Theodore P. Haughey had pleaded guilty to certain charges against him and was at the time serving a term in the penitentiary. The jury had no right to consider that fact. Of course, acts of Mr. Haughey had to be proven, and their criminal character established upon this trial, just as if he, and not the defendants, or he with the defendants, were upon trial. But a jury does not keep in mind such distinctions and discriminations, and the slightest word from the court tending to lead the jury to suppose they were at liberty to treat Mr. Haughey's guilt as an accepted fact would be most potent and controlling.

Under these circumstances, and in view of the fact that this assumption is directly at variance with the requirements of the law as set forth in the decisions of this Court cited in Subdivision VIII of this brief, it seems to us it is manifest and reversible error.

2d. We think the instruction is also erroneous in that it assumes that the defendants are liable as aiders and abettors, if it is shown that they either consented to, or participated in, the unlawful and criminal acts of Haughey. That such is not the law it requires little argument to prove.

That consenting to a crime does not make one guilty as an aider or abettor of the crime, within the meaning of the law, whatever may be said of it in morals, is, we think, clear.

After the account of the murder of Stephen in the last part of the seventh chapter of Acts, we have, as the first verse of the eighth chapter, "And Saul was consenting unto his death."

We suppose it will hardly be contended, however much uneasiness Paul, the Apostle, may have suffered in conscience by reason of the relation of Saul of Tarsus to this transaction, that on this statement he was legally guilty of either committing, or of aiding and abetting, in the sense of the law, the murder of Stephen.

It certainly cannot be the law that if A, being present, sees B giving to C a deserved, though it may be an unlawful, beating, and approves the act, he thereby becomes liable to prosecution for aiding or abetting an assault and battery.

But the proposition is too plain to require discussion, and it has been expressly adjudicated by the Supreme Court of Indiana more than once. In *Clem* v. *The State*, 33 Ind. 420, the trial court, speaking of the defendant, said:

> "If she was present at the time and place of the murder, in any way assisting, aiding, encouraging or contributing to the murder, she would be guilty as a principal to the crime. So, if the murder was perpetrated with her knowledge and consent or connivance, she was a principal."

This was held to be erroneous, and in the opinion, delivered by one of the ablest judges of Indiana, p. 432, it is said:

> "It is plainly not the law that one can be guilty o fmurder, without an overt act, who, by neither word nor gesture, has done anything to contribute to the commission of the homicide or assist, encourage, or evince approval of it at or before the act, and of whom it only appears that he was only present, and knew of the crime and mentally approved it. The silent thought, how-

ever wicked in the view of the Searcher of Hearts, is not a crime against our laws, but is left by them to another than a human tribunal."

And in *Wade* v. *The State*, 71 Ind., 535, *Clem* v. *The State* is cited and reaffirmed.

Standing by, within a few feet of an assailant, when a murder was committed, saying and doing nothing, is not aiding and abetting.

Conaughty v. *State*, 1 Wis., 159.

If it be said that the words with reference to consent, above referred to, are qualified by the phrase "contributing to their execution," the answer is that it is not clear that such is a proper construction of the sentence, and it seems to us that it is clear that the effect of the instruction as it reads could not fail to be an impression upon the minds of the jury that, if the defendants either consented to or participated in Mr. Haughey's acts, they would be guilty of aiding and abetting, as charged in the indictment. It is not enough in instructions to a jury that they be so framed as that, upon a careful study of the same, a lawyer may arrive at the conclusion that they may be construed consistently with the law. They should be so plainly worded as that the jury, hearing them once only, and in connection with all of the rest of the instructions, should not be misled thereby.

There was no occasion for saying anything about consent in this case. The defendants either actively aided and abetted in the transactions, or they did nothing, and it was their right that the Court, if he attempted to instruct the jury as to that particular point, should do so in language not to be misunderstood; that he should not put in a phrase having no legitimate application, and whose

only effect would be a probable misleading of the jury.

It will be observed, in connection with this part of the charge, that there is no qualification as to intent, knowledge or willfulness in connection with the consent of the defendants, or as to the deeds or words, the "something" supposed to have contributed to the execution of Mr. Haughey's acts. So far as this instruction goes, it leaves the jury to suppose, even on the construction most favorable to the Government, that if the defendants said anything contributing to the execution of Mr. Haughey's acts, the question of knowledge, willfulness or consent was wholly immaterial.

X.

The 46th assignment of error is based upon the following language of the charge of the court:

"If Haughey and the defendants withdrew moneys from the bank for the use of the cabinet company by means of checks drawn by it on said bank when it had no moneys or funds on deposit against which to draw, if they acted in good faith, honestly believing that the cabinet company would be able to pay the same when required, they would not be guilty of the intent to defraud the bank as charged; but, on the other hand, if they acted in bad faith, and did not believe, and had no reasonable ground to believe, that the cabinet company could pay such overdraft when required to do so, then they had no lawful right to make such overdrafts or allow them to be made." Trans. p. 162. Charge, p. 126.

This instruction amounts to this: If a man having an account in a bank makes an overdraft,

ever wicked in the view of the Searcher of Hearts, is not a crime against our laws, but is left by them to another than a human tribunal."

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It will be observed, in connection with this part of the charge, that there is no qualification as to intent, knowledge or willfulness in connection with the consent of the defendants, or as to the deeds or words, the "something" supposed to have contributed to the execution of Mr. Haughey's acts. So far as this instruction goes, it leaves the jury to suppose, even on the construction most favorable to the Government, that if the defendants said anything contributing to the execution of Mr. Haughey's acts, the question of knowledge, willfulness or consent was wholly immaterial.

X.

The 46th assignment of error is based upon the following language of the charge of the court:

"If Haughey and the defendants withdrew moneys from the bank for the use of the cabinet company by means of checks drawn by it on said bank, when it had no moneys or funds on deposit against which to draw, if they acted in good faith, honestly believing that the cabinet company would be able to pay the same when required, they would not be guilty of the intent to defraud the bank as charged; but, on the other hand, if they acted in bad faith, and did not believe, and had no reasonable ground to believe, that the cabinet company could pay such overdraft when required to do so, then they had no lawful right to make such overdrafts or allow them to be made." Trans. p. 162. Charge, p. 126.

This instruction amounts to this: If a man having an account in a bank makes an overdraft,

and the president of the bank allows such overdraft, they are guilty of a willful misapplication of the moneys of the bank, with intent to defraud the bank, unless at the time the overdraft is made and allowed they believe and have reasonable ground to believe that the money can and will be repaid on demand. Unless the customer and the banker believe and have reasonable ground to believe this, the overdraft is a fraud and a crime under this statute, although they may believe and have the best of reasons for believing that, though the money may not be replaced upon demand, it yet will be ultimately replaced, with interest, and the bank suffer no loss. If this be true, then it is equally true that, if a customer of a bank borrows a thousand dollars of the bank, giving his note at sixty days therefor, not believing or not having reasonable ground to believe that he can repay the note at maturity, and if the banker discounts the note, having also doubts whether the customer will be able to meet it at maturity, but both of them believing and having the best of reasons to believe that, although not at maturity, yet within a reasonable time the note will be paid with interest, the banker is guilty of a willful misapplication of the moneys of the bank, and the customer of aiding and abetting him in that crime. We cannot believe that this is the law.

Nor is the instruction helped by the use of the terms "in good faith" and "in bad faith." The determination of the question is made to turn on the ability of the borrower to repay the money on demand, or when required. Such is the natural construction, and such would undoubtedly be the impression produced upon the minds of a jury.

The words "when required," as used in this instruction, are exacting and non-elastic. They afford no lee-way, or time for preparation. They permit demand for the money immediately, and call for its payment instanter, and the jury are given to understand that unless the customer and the officer of the bank making the loan believe, and have reasonable ground to believe, that the customer can meet such an exaction whenever made, the loan is unlawful and those making it "would be guilty of the intent to defraud the bank as charged."

XI.

The 49th and 50th assignments of error (Trans. p. 163; Charge, p. 127) are based upon the italicized parts of the following paragraph of the instruction:

"An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, which represents as an actual transaction one which does not and did not exist, or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute. *If, however, the entry truly represents an actual bona fide transaction, then it would not constitute a false entry.* If Haughey actually accepted and discounted the paper in question, and agreed to give and did give the cabinet company credit for the amount of $44,000 therefor, then, even though he and the defendants knew the paper to be valueless, the entry of such a transaction correctly on the books of the bank would not constitute a false entry; *but if the paper was never accepted nor discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit, and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or defraud, as charged, such entry on the books of the bank would constitute a false entry.*"

The objection to the part covered by the 49th assignment is that it assumes that an entry is a

false unless it represents a *bona fide* transaction. It seems to us this instruction is within the condemnation of this Court, as expressed in the opinion upon the former hearing of this case. 156 U. S. 463.

It certainly is within such condemnation unless the sentence immediately following so far explains the meaning of the words "*bona fide*" as to take it out of the language there used.

If it be held that the word "actual" and the words "*bona fide*" mean the same thing, such might be its legal effect. But if the words *bona fide* are to be accepted in their usual sense as signifying a transaction had in good faith and without fraud, and we submit this is their natural interpretation, then this instruction is bad. And in any event, in the words of this Court as used in that decision, "the language used must have tended to confuse the jury and leave upon their minds an impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted a false entry." Unless the purpose was to leave some impression of this kind, there was no occasion, having used the word "actual," to use the words "*bona fide*."

2d. We think the part of the instruction covered by the 50th assignment of error is bad, because, under the facts of this case, it was wholly irrelevant. In the bill of exceptions (Trans. p. 91) we find the following:

"And be it further remembered that the evidence showed (not tended to show) that all the paper upon which the credit mentioned in said 39th count was based was retained in said bank as a part of its assets until the same matured, when it was renew-

ed by other paper of the same kind, and again renewed from time to time as it matured, until said bank failed at the time hereinbefore stated, at which time said paper so renewed was in the possession of said bank as a part of its assets and passed as such into the possession of the receiver of said bank, by whom it was held as a part of the indebtedness of the cabinet company to said bank secured by the mortgage executed to said Haughey as trustee for said bank by said cabinet company to secure the indebtedness of said cabinet company to said bank."

In other words, the bill of exception recites that all of the paper in relation to which the alleged false entry in the 39th count of the indictment was made was received by the bank, appropriated to its own use, renewed from time to time and held as *bona fide* paper until the failure of the bank; that as such *bona fide* paper it passed into the hands of the receiver, and was by him held as the paper of the cabinet company secured by its mortgage.

As we have said, this recital is not merely that the evidence "tended to show" these facts, but that it did show these facts, and the recital in that regard is strictly and to the letter the truth.

Under these circumstances, for the Court to put to the jury as a hypothesis upon which they were to act, in determining whether this entry was a false entry, the question whether such paper was ever accepted or discounted by Haughey for the bank, or whether it was simply left with the bank as a mere memorandum, and not as a deposit, and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank, with

the intent to deceive and defraud as charged, was to inject into the case an assumption for which there was no warrant in the testimony, and which could not fail to confuse and mislead the jury as to the issues they were called upon to decide, and all this greatly to the prejudice of the defendants.

When Haughey discounted this paper and gave the bank credit therefor, and when the bank had accepted the paper, put it in its vaults as a part of its assets, and, when it failed, turned it over to the receiver as a part of such assets, and the receiver had accepted and was seeking to collect the same as a part of such assets, as the paper of the cabinet company secured by the mortgage of that company, it seems to us it was a little late to set up the claim that the paper was never accepted nor discounted by Haughey or the bank, but was a mere memorandum, and not a deposit at all.

The truth is that this idea is an afterthought, suggested with a view of avoiding the effect of the decision of this Court on the former hearing, that a true entry of an actual transaction, however wrongful or fraudulent, is not and can not be a false entry.

XII.

As we have seen, the conviction in this case was upon the 4th, 9th, 11th, 12th, 13th, 14th and 39th counts of the indictment. We submit that neither of those counts sufficiently shows the organization of the Indianapolis National Bank as a national bank prior to the time when the several alleged offenses were committed, and that, therefore, the motion in arrest of judgment (1st Assignment of Error, Trans. p. 144) was well taken.

In each of the six counts for misapplication, namely, the 4th, 9th, 11th, 12th, 13th and 14th, the averment as to the organization of the bank was as follows:

"Which said association had been heretofore created and organized under the laws of the United States of America."

The indictment, of course, speaks from the date of its rendition and return, and the word "heretofore" must have reference to that date. The averment, therefore, is that the bank had been organized prior to the return of the indictment, and, this being so, it was insufficient. It was necessary that it should have been alleged that the bank was so organized prior to the commission of the alleged offenses. The language necessary to express that idea was that the bank had "theretofore" been so organized, and such is the allegation in the 39th count of the indictment (Trans. p. 46):

"Which said association had been theretofore organized and created under and by virtue of the laws of the United States of America."

And, as before stated, it is no answer to this objection that it comes after verdict. As heretofore shown in this argument, the day before the trial the plaintiff in error made application to the court for leave to withdraw his plea and demur to the indictment, and this application was refused. He cannot, therefore, be charged with laches in failure to present this point to the trial court before verdict. Trans. p. 79.

It will further be noted that this application was made on the 10th day of September, 1895, nearly a year before the question could arise upon the stat-

ute of limitations, and, therefore, it was not open to the charge that it had been delayed with the view to any such defense.

Under the circumstances, it seems to us entirely clear that objections to the indictment should be treated precisely as if a demurrer to each count thereof had been filed and overruled, with proper exceptions.

2d. With reference to the sufficiency of the 39th count, the objection is that the intent as charged against Mr. Haughey is double. In the first part of the count he is charged with making the false entry with intent to injure and defraud the bank, and in the last part of the same paragraph the charge is that the false entry was made with intent to deceive an agent appointed, and any agent or agents who might thereafter be appointed, by the Comptroller to examine the bank.

In other words, it charges that his intent was both to defraud the bank and to deceive the agent of the Comptroller.

On the other hand, in the aiding and abetting part of the count, the charge is only of an intent to deceive the agent of the Comptroller.

We submit that this is not good under a statute which makes the aider and abettor liable only in case of like intent with that of the principal offender.

IN CONCLUSION, we have to say: We think no one can read this record without being satisfied that from beginning to end there was no relaxation of undue efforts by the Court to aid the Government in securing a conviction. The refusal of the trial Court to allow the plea to be withdrawn in order to demur to the indictment; the recitals in the bill of

exceptions, which we were compelled to accept because it was impracticable to bring all the evidence here; the refusal to give a single instruction requested by the defendants, as requested, or to give anything bearing upon any specific evidence or theories of the defense; the continual emphasizing in the instructions given by the Court, of alleged specific facts tending to support the Government's case and to bear heavily upon the defendants; the imposition, as the result of the first trial, of a sentence of ten years upon the plaintiff in error, and of eight years as the result of the second trial, while the sentence of the principal offender, Mr. Haughey, was made only six years; must, as we think, convince this Court that no presumption ought to be indulged against the plaintiff in error because he appears in this Court a second time with an appeal for justice. This Court has not hesitated recently to reverse a second time in the same case a judgment and sentence from a district, whose Judge has sometimes been thought overzealous for convictions, and we confidently expect a like result in this case.

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Office Supreme Court U. S.
FILED.
MAR. 2 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

FRANCIS A. COFFIN, PLAINTIFF in error,
v.
THE UNITED STATES.
No. 801.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR THE UNITED STATES.

Supreme Court of the United States.

OCTOBER TERM, 1895.

FRANCIS A. COFFIN, PLAINTIFF in error,
v.
THE UNITED STATES.
No. 801.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR THE UNITED STATES.

This case was before this court in *Coffin* v. *The United States* (156 U. S., 433). The full and accurate statement of the facts there made renders their repetition unnecessary here.

For the reason stated in the opinion of the court, delivered by Mr. Justice White, the judgment of the lower court was reversed and the cause remanded for a new trial.

On the 1st day of May, 1895, the cause was set down for trial on May 28, 1895; and at a later day of the term that order was rescinded and the case was set down for trial on the 10th day of September, 1895.

On the 11th of September, 1895, a jury was duly empaneled and the cause proceeded with until the 3d day of October, when the jury returned their verdict, finding the defendant Francis A. Coffin guilty, as charged in the indictment, on counts 4, 9, 11, 12, 13, 14, and 39, and the defendant Percival B. Coffin not guilty.

The court, after overruling motions for a new trial and in arrest of judgment, sentenced the said Francis A. Coffin to imprisonment for the term of eight years.

The case is now again here on writ of error, and the plaintiff in error sets forth in 62 grounds of error the grievances whereof he complains.

On the former appeal to this court the assignment of errors embraced 78 distinct grounds; but in the opinion of this court (156 U. S., 446–463) but two of that number, to wit, the failure of the lower court to instruct the jury on the question of "presumption of innocence" and its failure to grant two instructions asked for on the subject of "false entries" and the language used by the court in its charge on the subject of false entries, were the only grounds on which this court felt warranted in reversing the judgment and remanding the cause for a new trial.

Most of the 62 grounds of error assigned here are but repetitions of so many of the 78 grounds of error which were before this court on the former appeal.

Treating the opinion and judgment of this court on the former appeal as an affirmance of the lower court on all of the points except those upon which its judgment was expressly reversed, it will not be deemed

necessary, in considering those grounds of error on the former appeal which are repeated here, to do more than direct the attention of the court to its former action.

ARGUMENT.

II.

To the action of the court in overruling the defendants' motion for a continuance on account of the absence of the witness George B. Stoddard.

The proceedings will be found on pages 71 to 79.

The defendants made affidavit (p. 71) that George B. Stoddard and C. H. Tyler were material and competent witnesses for them; that they were unable to procure their attendance and testimony as witnesses on the trial, which was set for the 10th of September, 1895.

> That each of said witnesses is at this time sick and by reason thereof unable to attend and testify at the trial of this cause at the time it is now set for trial.

That Tyler resides in the city of St. Louis, Mo., and Stoddard resides in the city of Chicago, Ill.

That subpœnas were regularly executed on each of them on the 4th of September, 1895.

> That the disability of said witnesses to attend is not permanent, and that the personal attendance and testimony of said witnesses can be obtained if this case shall be continued for a period of two months, or until the November term, 1895.

It will be observed from the subpœna (pp. 77, 78) that the witnesses were not summoned to appear at the court *until the 17th day of September, 1895.*

The affidavit of Dr. Edmunds (p. 76) states:

> I find that the said George B. Stoddard is in an advanced stage of diabetes, complicated by Bright's disease, and physically unable to perform any such service, and as his physician I forbid him to undertake any such trip during the period of at least two months following this date, as such exertion and excitement might bring about a fatal result to his present illness.

And Dr. Griveaud (p. 77) states in his affidavit as to Capt. A. H. Tyler—

> whom I have known for more than twenty-five years and treated for injuries to the spine received in the Ashtabula railroad accident in 1875, from which he has never fully recovered, in consequence of which he is unable to sit in a close room in warm weather containing many people because the effects of crowd poison produces intense mental and physical suffering; hence it would not be safe for him to perform the duties required of him before the latter part of October or beginning of November.

Granting or refusing continuances is generally in the *discretion* of the court, reviewable only in case of the abuse or discretion.

(*Means* v. *Bank of Randall*, 146 U. S., 620.)

A consideration of the facts presented to the lower court on this motion for a continuance discovers no reason for imputing to it an abuse of discretion, because—

1. The motion was made on the 9th of September, while the witnesses were not summoned to appear until the 17th of September.

2. While the motion was made and the evidence in support of it embraced both Stoddard and Tyler, yet

overruling the motion as to Stoddard is alone assigned here as error, the inference being that despite the physician's affidavit, Tyler did appear as a witnesss. Indeed, it does not appear that Stoddard, too, was not present and examined as a witness.

3. But perhaps it was thought too bold to insist that the 17th of September, 1895, would be too warm for Tyler to expose himself in a crowded court room, when the record of the former trial showed that from the 23d to the 28th of May, 1894, he had stood the test of a much larger crowd in the very same court room.

4. The court might well have found it difficult to understand how George B. Stoddard, "in an advanced stage of diabetes, complicated by Bright's disease, and physically unfit to perform any such service," on the 5th day of September, 1895, could be assured by his physician that two months hence he could safely venture from Chicago to Indianapolis and there undergo the strain of the trial.

The court did not abuse its discretion, but exercised it wisely to defeat a device which apparently reflected no credit upon the morals or wit of its contriver.

III.

That the court erred in admitting the testimony of Lewis J. Robinson in support of the fourth count.

The ground of this objection is set out in full on page 145 by Mr. Winter. It appears to be that while Haughey is charged in the fourth count with misappro-

priating $3,272.29, and the defendants are charged with aiding and abetting him in the misappropriation—

> there being no words such as "said" or "aforesaid," or their equivalents, used to connect the sum referred to in the charging part of the indictment as to the defendants with the sum referred to in the part of the indictment which refers to Mr. Haughey.

Which is, in brief, that it is not averred that the dollars which Haughey misappropriated were the dollars which the defendants aided and abetted him in misappropriating.

Comment on this point is unnecessary. But it may be well to call attention to the fact (p. 6) that the defendants are charged with aiding and abetting Haughey "as aforesaid, to *wrongfully*, etc., misapply;" the "aforesaid" here referring to all that part of the count which charges Haughey with misapplying.

On page 30 of brief for plaintiff in error this matter is gravely and with apparent seriousness argued at length.

While it is true the judgment in the former case was reversed by this court and the cause remanded for a new trial, yet, as it appears from the opinion of the court that this ground of objection to the indictment, with the infinite number of other grounds of objection, had been patiently and thoroughly considered by this court and not one single ground sustained, I had supposed that at least so far as the indictment was concerned we would be relieved from the duty of threshing out that already thoroughly threshed straw.

I have to repeat, as to the argument made by counsel in their brief on this point, what I have already conceded

upon another point—that the learning, zeal, and energy displayed in the elaboration of this point, as well as the conclusions of law arrived at, can not be successfully challenged. But the reply to it all is that they have nothing to do with this case, because the error does not exist of which counsel complain. It is not true, in point of fact, that the money which the defendants are charged with aiding Haughey in misapplying is not fully identified as the very money which Haughey is charged with having misapplied. Of course, this identity must be plain and unmistakable in the indictment and clear in the proof. It will be found here to be a mere question of punctuation.

The fourth count (pp. 5 and 6, Rec.) sets out with adequate minuteness the offense charged against Haughey. When it comes to charging the offense against these defendants on page 6, it says that they did "aid and abet" the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously, and willfully misapply the moneys, etc., to wit, the sum of $3,272.29.

What is the significance of the word "aforesaid" as here employed "as *aforesaid*, to wrongfully, etc., misapply?"

It had been said before what it was that was misapplied, who misapplied it, and how it was misapplied. Now, the charge is that these defendants did aid and abet Haughey in the commission of the crime "as aforesaid" set out. It is just as though it had charged that they did aid and abet Haughey to commit the act by repeating the verbal description of the act as given in the preceding part of the count. The use of the word "aforesaid" was to avoid this repetition.

IV.

In refusing to give the sixth instruction asked for by the defendants.

> The fourth count of the indictment charges that Theodore P. Haughey, as president of the Indianapolis National Bank, did, on the 20th day of May, 1893, unlawfully, willfully, and feloniously misapply certain moneys of said bank, in said count specifically named, to wit, the sum of $3,272.29. The count does not charge that the defendants aided or abetted said Haughey in misapplying the same moneys which he is charged to have misapplied. Under these circumstances this count charges no crime against the defendants, and on this count you should not convict the defendants.

This is covered by the preceding point.

V.

In refusing to give instruction 7 asked for by the defendants.

> Each count of the indictment must upon the proof stand or fall by itself. You must consider each count as if it were a separate and independent indictment, and you must consider the particular charge made against the defendants in each count and the evidence applicable thereto as if that were the only charge in the indictment, and your finding upon each count must be guilty or not guilty as the evidence applicable to that particular count proves or fails to prove that specific charge.

This is substantially covered in the charge of the court, bottom of page 123 and bottom of page 128.

VI.

In refusing to give instruction 8 asked for by the defendants.

> Ordinarily the law presumes that a man intends the natural and legitimate consequences of his acts, but when a criminal intent is made, as it is under the statute upon which this indictment is based, an essential ingredient of the offense denounced, the proof of wrongful acts does not, necessarily, prove the criminal intent. Thus the charge in each count of the indictment for the misapplication of the moneys, funds, and credits of the bank is that Haughey, the president, committed the acts charged with intent to injure and defraud the bank, and that the defendants aided and abetted Haughey with like intent. In order to warrant a verdict of guilty on any of these counts for misapplication, therefore, you must be satisfied from the evidence beyond a reasonable doubt, not only that Mr. Haughey did the particular acts charged, and that the defendants aided and abetted him therein, but you must be further satisfied from the evidence beyond a reasonable doubt that Mr. Haughey did said acts with the criminal intent aforesaid, and that the defendants aided and abetted him in such acts with a like criminal intent.

The instruction was rightly refused as not the correct expression of the law. The burden was on the Government to prove that the defendant had committed the acts which constituted a misapplication of the funds of the bank. From the facts thus proven, the jury was bound to infer criminal intent, unless the defendant by his evidence rebutted such inference.

The court in its charge stated the law correctly on page 125, from the paragraph "Before you can find Theodore P. Haughey," etc., down to the end of the second paragraph; and on page 126, in the paragraph "Every person is presumed," etc.

VII.

Refusing to give the ninth instruction asked for by defendants, which was in effect that if the bank had paid checks drawn by the Cabinet Company when it had no funds to its credit to meet them, that whether such payments constituted a misapplication of the funds of the bank depended upon "the intent with which the act was done, to be gathered from all the evidence bearing upon the subject."

The law was correctly stated by the court in its charge (pp. 125, 126). In the form in which the request was made by the defendants the law is not correctly stated, and the instruction was calculated to mislead the jury.

The statement that—

> If the account was an active one * * * then the mere fact that on certain days checks were drawn and paid in excess of deposits made upon that particular day would not constitute any crime unless it should appear from all the evidence that such payments were made with the intent alleged in these counts of the indictment on the part of Mr. Haughey, and that the defendants on trial aided and abetted him in so doing and with like intent—

is manifestly a confused, obscure, and inaccurate statement of law. In fact, each count charges criminal intent both as to Haughey and the defendants.

VIII.

The court erred in refusing to give the tenth instruction asked by the defendants.

> The payment of checks of the Indianapolis Cabinet Company when its account was overdrawn, or the discounting of drafts drawn by it on its customers or others, or of notes or acceptances given to it by its customers or others, was not a criminal misapplication of the funds of the bank within the meaning of this statute, even though the Indianapolis Cabinet Company was known by the president of the bank to be insolvent at the time, if in such transactions the president of the bank acted in good faith and without intent to injure or defraud the bank.

This is fully covered in the charge of the court, page 126 of the record.

IX.

In refusing to give instruction No. 13 asked for by the defendants.

> In this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National Bank was largely overdrawn—that is, that the Cabinet Company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you should find from the evidence that such was the fact, and that Mr. Haughey, as president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps,

> a regular and approved method of making loans by a bank, yet loans are not infrequently made by banks in that form, and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based.

This objection, stated in the same language, was before this court as the fortieth error assigned, page 163 of the former record, and was affirmed by this court. This will be considered with the fourteenth instruction, which follows it, as both are considered together in the brief for plaintiff in error, pages 58 to 64.

X.

In refusing to give instruction 11 asked by the defendants:

> If upon all the evidence in the case you have a reasonable doubt as to whether in any of the instances in which Mr. Haughey, the president of the bank, is charged in the indictment with having made a criminal misapplication of the moneys of the bank, he believed the Indianapolis Cabinet Company to be solvent, or that to refuse it further credit would result in loss to the bank, which might be avoided by furnishing further aid, and, acting upon such belief, did any of the acts so charged with the *bona fide* hope and intention of saving the bank from loss, and not with the intent to injure or defraud the bank, then your verdict should be not guilty as to each count charging such an instance of misapplication.

This was the fourteenth error assigned (p. 152 of the former record) and was affirmed by this court.

XI.

In refusing to give the fourteenth instruction asked by the defendants.

> Every wrongful or even unlawful misapplication of the moneys, funds, or credits of a national bank is not criminal under the statute upon which this indictment is based; for example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation, or company shall at no time exceed one-tenth of the capital stock of such association actually paid in. If, therefore, the directors or officers of a national bank have permitted an individual or company to borrow a sum in excess of one-tenth of its capital stock actually paid in, such an act would be unlawful, but not for that reason alone criminal. In order to make the granting of such excessive loan or loans criminal there must be added an intent on the part of the officer or agent of the bank making or authorizing the loan to injure or defraud the bank. If, therefore, you should find that the indebtedness of the Indianapolis Cabinet Company at the time of the misapplication of funds alleged in any count of the indictment exceeded 10 per cent of the capital stock of the bank, the transaction would not, for this reason alone, be a criminal misapplication.

This was the twenty-fourth error assigned on page 155 of the former record and affirmed by this court, covered by the charge of the court embraced in the thirty-sixth assignment of error in this record.

No. 13 is to the effect that permitting overdrafts to be made does not, of itself, prove a criminal intent.

No. 14 asserts the proposition that every unlawful misapplication of the moneys, funds, or credits of a bank

is not criminal under section 5209, Revised Statutes; and, further, that permitting one person to borrow a sum in excess of 10 per cent of the capital stock of the bank is not necessarily a criminal violation of the statute.

The court in its charge to the jury, not agreeing it may be altogether with the views entertained or at least expressed by counsel for defendants, did give to the jury a full and adequate instruction upon the law on the lines indicated in the thirteenth and fourteenth instructions asked for and refused.

The court's instruction will be found on page 120 and page 121 and is quoted on page 60 of brief for plaintiff in error.

The complaint made by counsel on page 61 of their brief to this charge of the court is, that the court did "not tell the jury in so many words that an overdraft, or the borrowing of more than 10 per cent of its capital from a national bank, was not necessarily criminal."

It would have been very unwise and imprudent for the court to have given such a charge. The court was right in qualifying and limiting the proposition announced by counsel for defendant. Ordinarily permitting an overdraft intentionally, willfully by an officer of the bank, is a crime, is a violation of section 5209; and if done the burden rests upon the officer to show that the act was free from criminal intent.

The court, however, in its charge to the jury, did cover the question of overdraft as follows, page 126:

> If Haughey and the defendants withdrew moneys from the bank for the use of the Cabinet Company, by means of checks drawn by it on the said bank,

> when it had no funds or money on deposit against which to draw, if they acted in good faith, honestly believing that the Cabinet Company would be able to repay the same when required, they would not be guilty of the intent to defraud the bank as charged; but, on the other hand, if they acted in bad faith and did not believe and had no reasonable ground to believe that the Cabinet Company could repay such overdrafts when required to do so, then they had no lawful right to make such overdrafts or allow them to be made.

This case was tried in the circuit court for the district of Indiana in the May term of 1895.

In February, 1895, a civil action was pending in that court of William B. Prescott against Theodore P. Haughey et al., directors of the Indianapolis National Bank, to recover moneys deposited in that bank and lost. The action appears to have been brought originally in a court of the State of Indiana, but was removed to the Federal court by Haughey and his associates, on the ground that a Federal question was involved, and was remanded to the State court because no Federal question appeared. (*Prescott et al.* v. *Haughey*, 65 Fed. Rep., 653.)

XII.

In refusing to grant the fifteenth instruction asked for by the defendants.

> The intent on the part of Mr. Haughey in the alleged misapplications of the moneys of the bank to injure or defraud the bank is an essential ingredient of the offense charged against the defendants. In determining the question, therefore, of Mr. Haughey's intent, you should take into consideration the relation he bore to this bank, both as an

> officer and shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank, and it is for you to say, in the light of all the evidence, whether Mr. Haughey, in letting the Cabinet Company have such moneys, did so with such intent. If the evidence does not satisfy you beyond a reasonable doubt of such intent, then the Government's case is not made out. In determining this question you may consider whether Mr. Haughey was in any way benefited or hoped to be benefited by the loans or advances to the Cabinet Company; and if you find from the evidence that there was no such benefit or hope thereof on the part of Mr. Haughey, such fact may be considered by you in determining whether there was any such intent as is charged, and if the making of such loans and advances was under such circumstances shown by the evidence as would injure or tend to injure Mr. Haughey, that fact may be considered in like manner and for the same purpose.

This was the twenty-first error assigned, page 155 of the former record, and was affirmed by the court.

The brief of plaintiff in error discusses this assignment, pages 53 to 58.

The gist of the assignment appears to be that unless the jury can find beyond all reasonable doubt an adequate motive on the part of Mr. Haughey for defrauding and injuring the bank, and also that he was in some way benefited, or hoped to be benefited, by the loans and advances to the Cabinet Company, that they can not find him guilty of a criminal intent.

As we have shown in another connection, the act of a misapplication of the funds of a bank and the act of

making a false entry in the books of a bank are each of themselves prima facie evidence at least of criminal intent. And the court has been careful to instruct the jury in this case, page 125, that they can not find the defendants guilty unless they find that they "committed the specific criminal act charged in some count of the indictment with the intent to deceive or defraud as therein charged." But even further than that, and as a substitute, doubtless, for this instruction, did the court charge, page 125:

> In determining whether they had the criminal intent to deceive or defraud, as charged, or whether they acted in good faith, you will take into consideration the situation of the parties, the course of business between them, as well as between the Cabinet Company and the bank; and all the facts and circumstances in proof before you. Before you can find the defendants guilty upon the charges contained in any count of the indictment you must find that the money, funds, or credits of the bank, or some material part of them, have been willfully misapplied by Theodore P. Haughey, as charged, with the intent to injure and defraud, as charged, and that the defendants knowingly aided and abetted such willful misapplication with like intent. You will look to all the proof in the case in determining these questions.

This extract from the charge of the court is given on page 55 of the brief of plaintiff in error. But the complaint is made in that brief, page 56—

> That while this statement of the court is correct as far as it goes, yet the defendants were entitled, in connection therewith, to have the jury told that the absence of such benefit, if shown by the evi-

> dence—that is, the absence of motive—was a proper matter for their consideration upon the question of intent.

That would have been very proper matter for argument by counsel to the jury. It would have been very improper to have come as a matter of law from the court to the jury.

Evidence of motive is always material where a question of intent is involved, and such evidence will always be admitted by the court to the jury, because it is evidence tending to prove a fact very material to the issue. An adequate motive may always be reasonably looked for as suggestive, inciting and sustaining a deliberate intention. But it is a question of evidence and not a question of law to be laid down by the court to the jury.

The court charged, page 126:

> Every person is presumed to intend the natural and ordinary consequences of his own acts. Hence, if the natural and ordinary consequences of the acts of Haughey and the defendant, as shown by the proofs, were to injure and defraud the bank as charged, you would be authorized to find that such was their intent, if such intent is in harmony with the other proofs in the case.

XIII.

To the refusal of the court to grant the eighteenth instruction asked for by the defendants.

> The counts of the indictment relating to misapplication charge a misapplication of the moneys of the bank. These charges of misapplication are not sus-

> tained by merely showing that the bank gave to the Cabinet Company credit to which it was not entitled, unless it is also shown that as a result of such credit the Cabinet Company was enabled to and did withdraw from the bank moneys of some kind, resulting in loss to the bank. Thus, evidence of the giving by the Cabinet Company and the receiving by the bank of renewal paper, upon which nothing was withdrawn from the bank, would not sustain the charge of criminal misapplication of the credits of the bank.

Whether the bank ultimately sustained loss or not has nothing to do with this case.

The two offenses charged in this indictment are "willful misapplication of the funds of the bank" and "making false entries on the books of the bank." The element of ultimate loss is not involved.

The thief who makes restitution to the person he has robbed does not thereby purchase immunity from the penalty attached to his violation of the laws of the State.

The point is further considered on page 64 of brief for plaintiff in error, where it is insisted that, unless it appear that by the false entries, or misapplication, the bank was to that extent actually depleted, the act was not criminal within the meaning of the statute. The meaning of all which is, that if the bank officer, with criminal intent, placed to the credit of the Cabinet Company $5,000 on a deposit by that company of paper which was known to be utterly worthless, that inasmuch as the money was not paid to the Cabinet Company across the counter of the bank, and was not therefore actually carried out of the bank building, but that the Cabinet Company was cred-

ited by the $5,000 on the books of the bank, the bank thereby lost nothing, and therefore no crime was committed.

The bank is not a party to this proceeding. These people are not being prosecuted for injury to the bank. It is a matter of no sort of consequence whether the bank was injured or not. They are prosecuted for violating the laws of the United States. The offense of which they were indicted was not against the peace, the interests, or the prosperity of the Indianapolis National Bank, but it was an offense against the peace and dignity of the United States.

But even on the ground upon which counsel place it they are wrong. Admit that the defendants carried no money with them out of the bank, yet they were $5,000 richer by reason of the act of the president of the bank when they left the bank than they were when they entered it. Not only was the money there subject to their check, but it was there subject to their assignment and subject to any judgment or execution that was then outstanding against them. The bank failing while this sum stood to their credit, rights to it vested in the creditors of the Cabinet Company, and it was no defense to the demand of the creditors of the Cabinet Company that this money should be applied to the payment of the debts of that company to say that the Cabinet Company did not own the money, that it had no actual deposit in bank, but if this sum had been placed to their credit by the fraudulent conduct of the president of the bank that defense would have availed nothing against the demand of the creditors.

The instruction asked for and refused by the court was properly refused, because it is not a correct expression of the law and would have misled the jury into the commission of grave error.

It is very rarely witty and it is always unjust to carve out from a connected narrative, or thesis, a single statement and present it as containing in itself a complete expression of the sentiment or opinion of the writer. The context always clears obscurity and relieves ambiguity.

Counsel cite the case of *Batcheller* v. *The United States* (156 U. S., 426) as sustaining their position, and they make an extract of two lines from the opinion of Mr. Justice Gray, which they offer as helpful in the argument of their position here. They evidently are going on the notion of *Ex pede Herculem*, and desire that the two lines extracted from Mr. Justice Gray's opinion shall be accepted as a compend of the whole. The fact is, the indictment in the Batcheller Case was the most distressingly bad indictment perhaps ever presented to this court; and Mr. Justice Gray, after instancing quite a number of incoherent and disconnected sentences, to say nothing of the omission, said, page 431:

> To call upon the accused or upon the court to pick out and put together from such a confused and ambiguous sentence, enough to make out a sufficient charge of unlawfully misapplying the funds of the association, would be inconststent with the settled rules of criminal pleading.

With that he concludes the paragraph in which the two lines quoted by counsel appear; so that the learned judge

was evidently not engaged in laying down any rule to be observed by the Federal court in passing upon instructions to the jury, but was considering there the defect in the indictment.

XIV.

In refusing to give instruction 19 asked by the defendants.

> Evidence has been introduced upon the trial with reference to drafts drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company and accepted in the name of the latter company, and it is claimed on behalf of the Government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the purpose of throwing light upon the intent of the defendants and of Theodore P. Haughey in connection with the charge of wrongdoing by them in the various counts of the indictment. This evidence can only be considered by you for this purpose, as there is no charge in any count of the indictment based upon this particular transaction, and the light it may throw upon the intent of the defendants or either of them or of said Haughey must depend upon all the circumstances shown to have attended the transaction.

This was assigned in the former record (p. 165) as the forty-fifth error and was affirmed by this court, and will be further considered in connection with the next succeeding assignment of error, as they are treated together in the brief for plaintiff in error, pages 36 to 53.

XV.

In refusing to give instruction 43 asked for by the defendants.

> As you have been already told, the Government in this case is prosecuting the defendants for particular transactions charged to have been unlawful and criminal, as specifically set forth in certain specific counts of the indictment. Evidence has been introduced by the Government of other transactions between the Indianapolis Cabinet Company and the Indianapolis National Bank and various other parties. This evidence has been allowed to go before you solely upon the question of intent and should be considered by you only in so far as it may tend to illustrate the intent of Mr. Haughey or of the defendants. Except for that purpose, you have nothing to do with other transactions than those specifically charged and prosecuted under this indictment. Except as illustrating such intent, the question of the lawfulness or unlawfulness of such other transactions is one with which you have nothing to do.

This was merely a caution to the jury as to the limited use they were to make of the evidence referred to, and was sufficiently impressed upon them in the charge of the court.

In the brief for plaintiff in error, from pages 36 to 53, is an imposing display of cases, which are cited from their supposed application to what appears to be the subject of complaint here, to wit, the refusal of the court to grant the nineteenth and the forty-third instructions, on pages 149 and 150, respectively, of the record.

These instructions, after reciting certain evidence which had been admitted on the trial, instruct the jury that such evidence can be considered by them only for the purpose of ascertaining or illustrating the intent with which certain transactions were done by the defendants. The court refused to give them. We are not informed from the record precisely the ground of the court's ruling, but I think it may be safely inferred, after reading the charge given by the court to the jury, that the ground might well have been that the substance of these instructions was embraced in the general charge, or else that the jury had been admonished when the evidence was introduced before them of the extent and the intent of its application.

The practice in some of the States—taken from the practice of the common law courts of England—would have made this assignment of error impossible. There it is required, in every bill of exception taken to the refusal of the court to grant an instruction, that the evidence which was admitted before the jury and to which such instruction is relevant or which establishes its relevancy should be set out in full, to the end that the reviewing court might see how far, if at all, such instruction was relevant to any evidence before the jury. Now, here, both of these instructions undertake to recite certain evidence as having been admitted to the jury, and also what was claimed on behalf of the Government in that regard.

Now, how is this court, before whom this question was brought for review, to ascertain whether these recitals are true or false? I have read this record quite thor-

oughly, and yet, without picking it up and exploring it again with a view of testing the accuracy of these recitals, I am unable to say whether the recitals are true or not.

The court below is entitled at least to the presumption of fair and reasonable conduct. It may be that the court below was not satisfied of the accuracy of the recitals in these instructions. The plaintiff in error could have relieved the matter of all obscurity by introducing into the bill of exceptions, in connection with these instructions, the evidence which established their relevancy and accuracy. It is enough to say that their relevancy and their accuracy is not apparent.

I refer to the charge given by the court to the jury on pages 128, 130, and 131.

XVI.

In refusing to give instruction 20 asked for by the defendants.

> Some evidence has been given in this case tending to prove that the defendants, as officers of the Indianapolis Cabinet Company, and some of the other corporations organized as subsidiary thereto, have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation

by an understanding between the drawer and drawee, and if you shall find further that such drafts or paper, if placed in the bank for discount, were in whole or in substantial part secured by bonds or other collateral, or *was* of real substantial value, this fact will be a further circumstance for your consideration, tending to show the good faith of such transaction with the bank.

This was the forty-second error assigned on page 164 of the former record, and was on that appeal not found sufficient to justify reversal of the judgment.

XVII.

The refusal of the court to give the twenty-second instruction asked for by the defendants.

If there is evidence sufficient to raise a reasonable doubt in your minds as to whether or not any of the notes, drafts, or acceptances which were discounted by the Indianapolis National Bank, or placed to the credit of the Indianapolis Cabinet Company in its account with said bank, or which were given in renewal of notes or drafts which had been so discounted or credited, were executed in consideration of the fact that property of the Indianapolis Cabinet Company, upon which the Indianapolis National Bank held a mortgage, was about to be shipped from the factory of said Indianapolis Cabinet Company to the parties to said notes or drafts other than the Indianapolis Cabinet Company, and in consideration of the consent of the Indianapolis National Bank to such shipment, and at its request, for the purpose of putting it in position of a creditor of such consignee, then, as to such notes or drafts, you can not find that they were executed without a valuable consideration,

or that they were accommodation paper, and the execution of such paper and its acceptance by the bank would not be willful misapplication of the moneys, funds, or credits of said bank.

This was the forty-ninth error assigned on page 180 of the former record, and was on that appeal not found to justify reversal of the judgment.

XVIII.

In refusing to give instruction number 24 asked by the defendants.

> As to some of the counts charging a criminal misapplication of the funds of the bank by the payment of checks of the Indianapolis Cabinet Company when it claimed that it had no funds on deposit in the bank, it is claimed by the defendant that the checks so charged to have been wrongfully paid were checks to obtain money for the pay rolls of the Cabinet Company, and that it was the custom and practice of the Cabinet Company to make deposits at or about the time of making such checks with a view to the payment thereof. If you find from the evidence that such was the practice of the Cabinet Company, and that in any of the instances where it is claimed by the Government that such pay-roll checks were wrongfully paid such deposits were in good faith, made in accordance with that practice and with the sanction of the president of the bank to meet such pay-roll checks, then the mere fact, if you find it to be a fact, that in some of these instances the deposits do not appear upon the books of the bank as of the same date as the checks drawn against the same, because deposits were made after 3 o'clock in the afternoon or on the day before or day after, or for

any other reason which has been sufficiently explained in the testimony, such facts would not prove or tend to prove that the payment of such checks was a criminal misapplication of the funds of the bank.

It was a matter of no sort of consequence to what use the Cabinet Company proposed to apply the funds drawn by it from the bank—whether to its pay rolls or some other object.

If the defendants here aided and abetted in the performance of certain acts on the part of the president of the bank, which acts, if performed with criminal intent, constituted a misapplication of the funds of the bank, then the defendants are guilty; and this is covered by the charge of the court.

XIX.

In refusing to give the twenty-ninth instruction asked by the defendants.

The ninth count of the indictment charges a willful misapplication of the funds of the bank in the payment of certain checks drawn by the Indianapolis Cabinet Company on the bank on the 14th day of July, 1893, amounting to the sum of $3,467.23. The defendants claim that these checks were two in number, were given by the Indianapolis Cabinet Company to the Indianapolis National Bank solely to take up in said bank two drafts theretofore drawn by said Indianapolis Cabinet Company on R. Boker & Co., of Mexico, and the American Desk and Seating Company of Chicago, which drafts had been theretofore deposited in said bank and credited to said Cabinet Company, had been by the bank forwarded for collection and returned unaccepted and

unpaid, and that on the same day the Indianapolis Cabinet Company gave to said bank, in place of said two drafts, a new draft on the American Desk and Seating Company for the amount of the two drafts so dishonored, and that by said transactions no loss was sustained by said bank. If you find from the evidence that such were the facts, and that as the result of said transaction no moneys, funds, or credits were lost to the bank, but that, as the result of the whole transaction, the bank had and held the draft of the Indianapolis Cabinet Company for the entire amount of said two claims for which the checks were given, then upon these facts no criminal misapplication of the funds of the bank is shown, and the defendants are entitled to an acquittal upon this count.

This is substantially covered by the thirty-sixth error assigned on page 164 of the former record.

The proposition contended for is, that when the bank discounted the worthless drafts of the company and then afterwards received the equally worthless checks of the company in payment of the drafts, the receiving the checks by the bank in payment of the drafts was not a misapplication of the funds of the bank, because the company got no money on the checks.

XX.

In refusing to give the thirty-first instruction asked by defendants.

By the eleventh count of the indictment it is charged that the moneys, funds, and credits of the bank were criminally misapplied by Mr. Haughey, the president, in the sum of $1,850 by paying and causing to be paid said sum of money out of the

> funds of the bank when the Cabinet Company had no funds to its credit in the bank for the payment of the same. On behalf of the defendants it is claimed that on said day the Indianapolis Cabinet Company made a *bona fide* deposit in said bank in excess of the amount of said check to provide for said check. If you find from the evidence that such was the fact, then the payment of said check would not be a criminal misapplication of the funds of the bank.

The instruction as given was misleading. The eleventh count charges that Haughey, the president of the bank, paid $1,850 of the funds of the bank to the Cabinet Company upon the checks of said company when that company had no funds to its credit in the bank; that this was done with intent to defraud the bank, and that defendants with like intent aided Haughey as aforesaid.

The instruction asked for and refused amounts to no more than this; that if the jury find that the Cabinet Company did have funds to its credit in bank, then their verdict must be for defendants.

A check presented in the forenoon when the books of the bank showed no funds to the credit of the maker, if paid on presentment, would have been a misapplication of the funds of the bank, even although at a later hour of the same day funds sufficient to meet the check were placed to the credit of the maker.

XXI.

In refusing to give instruction 32 asked for by the defendants.

> The twelfth count charges a misapplication on the 12th day of June, 1893, of the funds of the bank

to the amount of $1,610.72 by the payment of certain checks of the Cabinet Company which ought not to have been paid. It is claimed on behalf of the defendants that on that same day the Indianapolis Cabinet Company made a deposit with said bank of a draft upon the American Desk and Seating Company for $2,282.10 to provide for said check, and that said American Desk and Seating Company was then owing said Indianapolis Cabinet Company the amount of said draft. If you find from the evidence that such were the facts, and that such deposit was made and said draft was received as a deposit by the bank, and the Cabinet Company was given a credit upon the books of the bank therefor, then the payment of said check against said credit would not be a misapplication of the funds of the bank.

This is precisely the same as the preceding, except that it is on a draft instead of a check.

Both of these points are covered fully by the twenty-sixth assignment of error on page 158 of the former record.

XXII.

The refusal of the court to grant instruction 33 asked by the defendants.

The thirteenth is one of the general counts of the indictment and charges a criminal misapplication of the funds of the bank in the sum of $10,106.08 on the 9th day of May and on divers times between that and the 18th day of June, 1892. The Government has elected to rely upon a transaction of May 23, 1893, as the substantive charge in this count—that is, upon the payment of checks on that day to the amount of $1,373.35. The claim of the Gov-

ernment is that the defendants on that day had no funds or credits in the bank out of which said checks could be paid. The defendants, on the other hand, claim that on the 20th day of May they made a deposit in said bank of funds to the amount of $6,394.10, and received from the bank on said day a *bona fide* credit for such deposit, and they further claim that all of the checks made between said 20th and 23d days of May, both inclusive, aggregated only $5,860.88. If you find from the evidence that such are the facts, then the payment of said checks would not be a criminal misapplication of the funds of the bank.

This is covered by Nos. 33 and 34 of the assignments on page 161 of the former record.

XXIII.

Refusing to give instruction 23 asked by the defendants.

Evidence has been introduced with reference to the value of the plant and other assets of the Indianapolis Cabinet Company. Some question has been made in the introduction of this testimony as to what is the proper basis for the valuation of this property. So far as the evidence of values is important, it should have relation to the time during which the alleged wrongful acts charged against the defendants were committed and the time or times at which they were obtaining the money, funds, or credits from the bank, and such values should be determined with reference to all the circumstances surrounding said Cabinet Company and said business at those times, namely, from about the 23d day of September, 1892, until near the time of the failure in 1893. This value is to be measured, not by what the property would bring at a forced sale under the

hammer, nor at a fancy price which might be placed upon it by a holder not wishing to sell. The true criterion is its market value, and "the market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of having it." In estimating its value, all the capabilities of the property and all the uses to which it may be applied or to which it is adapted are to be considered. In the language of the Supreme Court of the United States, "The inquiry in such cases must be, 'What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted—that is to say, what is it worth from its availability for valuable uses?' * * * Its capability being made thus available gives it a market value which can readily be estimated." Applying these rules and considering all the evidence on the subject which has been placed before you both by the Government and by the defendants, you will be able to arrive at a just conclusion as to the fair market value of this property during the period in controversy.

This is fully covered by the twenty-seventh error assigned on page 158 of the former record.

XXIV.

In refusing to give instruction 34 asked by the defendants.

> The facts stated in the thirty-ninth count of the indictment do not sufficiently charge the defendants with the commission of any public offense, and as to this count they should be acquitted.

This is a demurrer to the thirty-ninth count of the indictment submitted to the jury instead of to the court.

XXV.

The court erred in refusing to give the instruction numbered 35 asked by defendants.

> In considering the false-entry charges in this indictment it is necessary that you shall know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of a bank of some alleged transaction which never occurred or of a transaction which did occur, but which is falsely recorded, would be a false entry; but an entry in which that which has been done by the officers or agents of the bank is correctly set forth is not a false entry. If, therefore, you find from the evidence, for instance, with reference to the alleged false entries in the thirty-ninth and fortieth counts, that the bank had actually discounted and given to the Cabinet Company credit for the $44,000 of paper presented by the Cabinet Company, and had authorized said Cabinet Company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry, but was and is a true entry, and the indictment, so far as based upon such entry, can not be sustained.

This was upon a definition of what constitutes a "false entry" within the meaning of the statute.

In *Coffin* v. *United States* (156 U. S., 463), Mr. Justice White, after commenting upon the charge of the court, said:

> The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a

false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place and is entered exactly as it occurred.

In the charge delivered by the court below the following statement appears on page 127 of the record:

> An entry knowingly and purposely made on the books of the bank with intent to deceive or defraud as charged, which represents as an actual transaction one which does not and did not exist, or an entry knowingly and purposely made with intent to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute.
>
> If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry.

XXVI.

Refusing to give the thirty-seventh instruction asked by the defendants.

> In the thirty-ninth and fortieth counts of the indictment it is charged that Mr. Haughey, president of the bank, made or caused to be made in the Individual Ledger L, A to M, at page 931 of said book, under the date of May 9, 1893, and in the account of the Indianapolis Cabinet Company, in the credit column on said page, a false entry, to wit, 44,000, which entry, it is alleged, purported to show that the Indianapolis Cabinet Company was entitled to a credit of $44,000 on that day on the books of

the bank. If you find that at the date of this transaction the Indianapolis Cabinet Company had presented to Mr. Haughey drafts drawn by it and by other companies upon various companies to the aggregate amount of $44,000 for the purpose of being substituted for an obligation which the Cabinet Company was then under to the bank on account of an overdraft in its account and for obligations it was then under to the bank on account of drafts previously deposited by it, drawn upon customers, and for which it had received credit and which had been returned unpaid and unaccepted and were then held by the bank and were the obligations of the Cabinet Company to that amount, and that Mr. Haughey accepted said paper to the amount of $44,000 in lieu of such overdraft and returned drafts then held by him, and that the entry of 44,000 to the credit of the Cabinet Company, on page 931 of the ledger, evidenced this credit as against such overdraft and a charge then made to them to the amount of the returned drafts, and that thereby the overdraft and obligation of the Cabinet Company on account of the returned drafts were wiped out, and that the paper thus deposited was retained by the bank as an obligation of the various companies executing it, and the previous obligation of the Cabinet Company on account of the overdraft and returned drafts was relinquished, the entry thus made of 44,000 on page 931 of the ledger would not be a false entry.

This was fully covered by the twenty-fifth error assigned on page 157 of the former record, and also in the charge of the court to the jury in this case, page 127.

XXVII.

In refusing to give the thirty-eighth instruction asked for by the defendants.

> If you find from the evidence that, the Indianapolis Cabinet Company's account in the Indianapolis National Bank being overdrawn, the defendants, or either of them, as officers of such Cabinet Company, and at the request of Haughey, president of the bank, furnished to said bank bills, drafts, and notes of parties possessed of little or no means, aggregating an amount sufficient to balance and more than balance such account, which said Haughey, as president, received and placed to the credit of said Cabinet Company in said account, such action on the part of said Haughey giving such credit and entering the same in the books of the bank, whatever may have been his motive, was not making a false entry within the meaning of this statute.

The gist of this instruction is that, if Haughey gave the Cabinet Company credit on the books of the bank with the aggregate amount of certain bills, drafts, and notes of parties possessed of little or no means, and Haughey entered such amount on the books of the bank to the credit of the company, it was not a false entry, "whatever may have been his motive," although the aggregate amount may not have been worth a cent.

If the law was a system of traps and triggers to catch the ignorant and unwary by mere form of words and expressions, it might be necessary to combat such propositions as this; but as the purpose of the law and the object of its courts is to effectuate justice, we shall not linger longer here.

Fully covered by the twenty-ninth assignment of error on page 159 of the former record, and covered also by so much of the charge of the court as embraced in the thirty-seventh assignment of error here.

XXVIII.

In refusing to give instruction 39 asked for by the defendants.

> If Mr. Haughey, as president of the bank, received from the Cabinet Company drafts, bills, or notes which by reason of the insolvency of the parties or for any other reason ought not to have been received and gave to said Cabinet Company credit therefor and afterwards caused an entry of such credit to be made upon the books of the bank, then whatever wrong was done in the matter by Mr. Haughey was not in causing such entry to be made, but was further back, in receiving the paper and giving the credit. Not to have made the entry after receiving the paper and giving the credit would have been to commit another wrong, since it was his duty, as president of the bank, to see that the books should speak the exact truth as to that which he had caused to be done, and however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute.

Covered by the preceding point.

XXIX.

In refusing to give instruction 40 asked for by the defendants.

> In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the mak-

> ing of false entries, as charged in this indictment, it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence, beyond a reasonable doubt, that the defendants had knowledge of the making of such entries, and that they did acts aiding and abetting Mr. Haughey in making the same with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for it is not sufficient to warrant their conviction for aiding and abetting the making of the false entry on the books unless some knowledge of or connection with the making of such false entry is brought home to them.

Covered by the twenty-eighth assignment of error, page 159 of the former record.

This is considered in the brief of plaintiff in error, pages 65 to 69.

Counsel inquire (p. 66), with all the eloquent emphasis of interrogation mark, what unlawful and criminal act? I reply, those obviously referred to in the immediate context of the judge's charge from which the extract quoted was taken.

In the charge of the court (p. 127) he tells the jury what is necessary in order to convict Haughey of making false entries. He then, in the next paragraph, says:

> If you are satisfied that Haughey did make or cause the false entries to be made, you can not find the defendant guilty as aiders and abettors unless, etc.

Referring in phrase "unlawful and criminal acts of said Haughey" to what had been stated in the hypothesis immediately preceding.

The court properly refused to give the instruction asked for, and with equal propriety did give so much of it as a due regard for the law allowed.

The real ground of counsel's complaint appears to be that the court, on page 126, as well as 127, refers to Haughey's being charged with having made certain false entries and having done "unlawful and criminal acts," both in the plural, implying more than one; whereas, as it is alleged, all of the counts charging false entries had been withdrawn except the thirty-ninth, which charged but one single act of false entry; and the error assigned here is, that the court by its language led the jury to understand that Haughey had been guilty of more than one act of making false entry.

I think here, too, a regard for the context of the court's charge would relieve the situation. At the bottom of page 126 the court having disposed of the question of misapplication in its charge to the jury, said:

> You will now, gentlemen of the jury, turn your attention to the charges in relation to false entry.

He then goes on to say that Haughey was charged with having made false entries on the books of the bank and the defendants were charged with having aided and abetted him.

> These entries relate to six pieces of paper which were brought to the bank in May, 1893, amounting on their face in the aggregate to $54,000. The count of the indictment relating to these false entries is numbered 39 and you have nothing to do with any other counts in the indictment relating to false entries except this one. This countis as follows:

(Here the court read to the jury the thirty-ninth count as the same appears elsewhere in the record.)

So, that inasmuch as the judge read the count to the jury and told them that that was the only count with which they had anything to do, it is difficult to see how error to the prejudice of the defendant could have occurred by the judge using the plural instead of the singular.

XXX.

In refusing to give the forty-second instruction asked for by the defendants.

> If you should find from the evidence that the Indianapolis Cabinet Company caused the paper of other persons or corporations in the form of commercial paper to be substituted for indebtedness contracted by said Cabinet Company to the Indianapolis National Bank and for which the bank held the obligations of the Cabinet Company, or that such paper was put into the bank by the Cabinet Company for moneys of the bank loaned or paid to the Cabinet Company, and that the sole purpose and intent of so doing was to conceal the fact that the indebtedness of the Indianapolis Cabinet Company to the bank exceeded 10 per cent of the capital stock of the bank, such facts would not of themselves warrant you in finding that the moneys so obtained were criminally misapplied, or that the defendants were guilty by reason of such transactions, nor should they be considered by you as evidence of an intent on the part of either Mr. Haughey or the defendants to misapply the funds of the bank in any of the transactions to which the counts of the indictment charging misapplications apply.

Covered by the twenty-second assignment on page 155 of the old record.

XXXI.

In refusing to give instruction 45, as asked by the defendants.

> Not only does the law presume in favor of the defendant's innocence at the beginning of their trial, but the burden of proving their guilt rests upon the Government throughout the trial. Under no circumstances does that burden shift, nor at any stage of the case are the defendants required to prove their innocence. Unless by the evidence placed before you their guilt is established beyond a reasonable doubt, they are entitled to an acquittal, and this rule applies as well to the question of the intent with which acts were done as to the question whether they were done.

Covered by the charge of the court on page 129, record.

XXXII.

In refusing to give instruction 47 asked for by the defendants.

> In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National Bank, with intent to injure and defraud the bank, willfully misapplied the funds of the bank, and also that with intent to defraud the bank and to deceive an agent appointed or to be appointed to examine its affairs he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having with like intent aided and abetted said Haughey in said wrongful acts. In order to sustain this charge of aiding and abetting

against the defendants the evidence must show beyond a reasonable doubt that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, stood in a similar relation to the alleged crime as Mr. Haughey; that they approached it from the same direction and touched it at the same point. If, as matter of fact, in any of the transactions charged as criminal in this indictment Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then, as to that transaction, they are not guilty as charged in this indictment.

Covered by the seventeenth assignment of error, page 157, old record, but will be considered in connection with the thirty-second assignment of error here, as the two present substantially the same question and are treated together in the brief for the plaintiff in error, pages 15 to 30.

XXXIII.

In refusing to give instruction 48 asked by the defendants.

In the indictment in this case it is charged that Theodore P. Haughey, president of the Indianapolis National Bank, with intent to injure and defraud the bank, willfully misapplied the funds of the bank, and also that, with intent to defraud the bank and to deceive an agent appointed or to be appointed to examine its affairs, he made or caused to be made false entries upon the books of the bank. The defendants, Francis A. Coffin and Percival B. Coffin, are charged with having, with like intent, aided and

> abetted said Haughey in said wrongful acts. In order to sustain this charge of aiding and abetting against the defendants the evidence must show, beyond a reasonable doubt, that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey—that is, it must be shown that the Coffins, charged as aiders and abettors, approached the transaction charged as a crime from the same direction and touched it at the same point as Mr. Haughey. If, as matter of fact, in any of the transactions charged as criminal in this indictment, Mr. Haughey acted with one intent and the defendants acted with a different and unlike intent, then they are not guilty as charged in this indictment.

Covered by the twenty-eighth assignment of errors, page 159 of former record.

The error here complained of, and that assigned in the next preceding assignment, No. 32, are considered together, in the brief of plaintiff in error, pages 15 to 30, and that method will be observed here.

This same objection was urged at the former hearing of this case, and was considered by this court and passed upon in the opinion delivered by Mr. Justice White.

Counsel in their brief here make extended extracts from that opinion, and lament that the court had misapprehended their meaning, but frankly admit "perhaps our language in connection with the decision cited justified this assumption. If so, it was broader than the view we actually entertained."

This court had before them the record in this case, with so much of the evidence offered on the trial as

plaintiffs in error had seen proper to have certified, and with the instructions prepared by counsel and rejected by the court; and with the brief of counsel, containing their argument in support of the error assigned by them of the refusal of the court to grant the instruction, and yet, with all these aids to an intelligent understanding of the meaning of counsel, it appears that this court failed to apprehend the meaning which counsel intended to convey, and counsel now admit that "perhaps our language" justified the misapprehension.

If, with the aid of the record, the oral argument, and the elaborate printed brief, this court failed to apprehend the true meaning of counsel, it is hardly matter for wonder that in the instructions which counsel offered in the court below, but which that court declined to grant, as accurate, intelligible, and relevant expressions of the law, counsel should have in like manner failed to convey the impressions and views which perhaps were in their mind.

Their complaint here is that the court below erred in confounding the true attitude of the defendants as coprincipals with their alleged attitude of aiders and abettors.

It is insisted in the brief, and perhaps rightfully, that if two or more persons engage in the actual commission of a crime, they are principals; that if A and B engage in fighting a duel, one of them can not be charged as the aider and abettor of the other; and many cases are cited in the brief, and much learned reasoning employed, to establish a conclusion which the dictionaries settle.

But the argument there submitted goes to the point of showing that the defendants here were in fact coprinci-

pals with Haughey, and were not, in fact, his aiders and abettors.

But all of that is beside the real question, which is involved in the errors complained of and specifically assigned here. These errors were the failure of the court to grant the instructions asked for by the defendant, and the true question raised upon these assignments is, did the court err in refusing to give those instructions to the jury as clear, accurate, and sound expressions of the law? The instructions must speak for themselves.

They are Nos. 47 and 48, and are alike, with the exception that in the forty-seventh instruction the words "stood in a similar relation to the alleged crime" are inserted.

In these instructions the court was asked to state to the jury that—

> In order to sustain this charge of aiding and abetting against the defendant, the evidence must show beyond a reasonable doubt that the defendants acted in the matter with a like intent as that attending the action of Mr. Haughey; that is, it must be shown that the Coffins, charged as aiders and abettors, approached the transaction charged as a crime from the same direction and touched it at the same point as Mr. Haughey.

The court might well have declined to grant this charge on the ground that it was unintelligible—certainly to the average jury mind. It is metaphorical. What would the average juror understand from a charge which told him that he must find that the parties charged "approached the transaction from the same direction and

touched it at the same point?" Here a man is charged with a misapplication of the funds of a bank and with making false entries in the books of the bank, and other men are charged in the same indictment with aiding and abetting him in those matters; and the jury are told by the court that before they can convict these persons of the crime of aiding and abetting the principal transgressor, they must find that these persons approached the transaction from the same direction and touched it at the same point that the principal did, and no explanation whatever is given to them of what this means; but that part of the charge is, in fact, given as explanatory itself of a preceding statement that the jury must find that the parties charged with aiding and abetting "acted in the matter with a like intent as that attending the action of Mr. Haughey."

Now, pray what is meant by an "intent attending an action?" An intent must precede an action, and if that intent abides throughout the transaction, it may in that sense be said to attend it; but the transaction must have had its inception in an existing intent. That intent, after the criminal transaction was commenced and had proceeded, may have been abandoned, and another intent, equally criminal, may have succeeded. In that case the first intent can not be said to have attended the transaction. Here the jury might well have complained that they could not ascertain from the evidence whether the original criminal intent with which the transaction was begun attended it through all its stages or not.

But it was misleading, because inaccurate, to say that the aiders and abettors must have a like intent with the

principal. They may have had wholly different intents, and still have been liable to the penalties prescribed for violation of section 5209.

True, there must have been a common intent that the funds of the bank should have been misapplied and that false entries should have been made in the books of the bank. And if these acts were done, if false entries were made, and if the funds of the bank were misapplied, then the intent, the criminal intent, is inferred. No further evidence of it can be called for from the Government. It refers to a general guilty intent, and the indictment will be held conclusively proved when the act is proved to have been knowingly committed. The phrase has the same meaning in this statute and the intent is proved in the same way as in forgery.

(*United States* v. *Taintor*, 11 Blatch., 374; *United States* v. *Harper*, 33 F. R., 481.)

The intent that the act charged should be committed is the only intent that is required to be had in common by principal and accessory.

The objection here appears to be that the offense of misapplying the funds of the bank could not have been committed by Haughey, the principal, alone. That it was necessary to the complete commission of the offense that others should have cooperated with him. That it is not like murder, or stealing, which one unaided could commit completely of himself; but that it was necessary from the very nature of this crime of misapplication of funds, that two or more should have been engaged in it. The misapplication consisting in taking the funds of the bank from the vaults of the bank and transferring them

to some one across the counter of the bank. This is not accurate. A burglar who breaks into a bank and takes its funds and carries them off can not be charged and convicted with a misapplication of the funds of the bank.

And if while in the bank the burglar makes entries in the books of the bank, crediting himself with large deposits, he surely can not be charged and convicted with making false entries in the books of the bank, within the meaning of the statute.

These statutory offenses under section 5209 can be committed only by those upon whom official duty and obligation is laid. The president and cashier of a national bank are charged each with the duty of appropriating the funds of the bank in accordance with the requirements of his office. If, instead of doing so, he applies them to some other object with intent to injure and defraud the bank, he is guilty of a misapplication. So, too, the officer who is required to make correct entries of the business transactions of the bank in the books of the bank. If he makes incorrect and untruthful entries, misrepresenting and falsifying the actual transactions of the bank, he is guilty of making false entries in the books of the bank within the meaning of the statute.

But it was manifestly impossible for these other persons who are charged with aiding and abetting Haughey—these men who stood outside the bank, who had no official duty or obligation laid upon them, either as to the application of the funds or the entry of the transactions of the bank—it was impossible for them, in any legal sense, to have been guilty of the statutory crime of mis-

application or false entries. The statute itself recognizes this distinction. It is clearly pointed out by Mr. Justice White in that part of his opinion which is quoted in the brief of plaintiff in error.

Section 5209 provides:

> Every president, director, cashier, teller, clerk, or agent of any association, who * * * willfully misapplies any of the moneys, funds, or credits of the association, * * * or who makes any false entry in any book, etc., and every person who with like intent aids or abets any officer clerk or agent. * * *

It must be the official who commits the act as principal. It must be "every person" who is guilty of the offense of aiding and abetting. So that, if these defendants had gone into the vaults of the bank with Haughey and placed their hands with his in the vessels containing the moneys and funds of the bank and had simultaneously drawn them out and placed them in their pockets, even then Haughey alone could have been charged as principal and these defendants only as aiders and abettors.

Counsel say in their brief (p. 21):

> Our contention is, and was intended to be in our former brief, that one having to the bank, as in the case at bar, the relation only of a customer, depositor, and borrower, having no interest in common with the officer charged with wrongdoing of any character whatsoever, dealing with such officer across the counter, representing an adverse interest, could not, in any transaction between such officer and such customer, the one representing the bank and the other the adverse interest, be guilty of aiding and abetting within the statute.

Well, I don't understand that anybody has anywhere, at any time denied that proposition. That case omits every essential feature of crime prescribed in the statute.

If the relation was "only" that of a customer, if he had "no interest in common with the officer charged with wrongdoing of any character whatsoever," of course he could not be held to have aided and abetted the officer in the commission of a crime, because there was a total absence of criminal intent or criminal conduct.

The druggist who, upon a physician's prescription, in good faith sells poison to one who purchases it with the intent, and actually uses it, to commit suicide, can not be held to be an aider and abettor in that crime.

Counsel appear to have the idea that the crime of aiding and abetting is less in degree in legal, if not moral, turpitude than that of the principal transgressor. But such is not necessarily the case. The aider and abettor is a coprincipal.

> If one encourage another to commit suicide and is present aiding him while he does so, such person is guilty of murder as principal; and if two encourage each other to murder themselves, and one does so, the other being present, but the latter fail in an attempt upon himself, he is principal in the murder of the first. (Wharton's Crim. Law, 10th ed., sec. 216 and cases.)
>
> Principals in the second degree are those who are present aiding and abetting the commission of the offense. (*Ib.* sec. 211.)

We think the court was plainly right in refusing to bewilder the jury with these instructions, because they

are obscure, ambiguous, if not unintelligible in form and inaccurate and unsound in substance. The court did, however, page 127, charge the jury as follows:

> If you are satisfied that Theodore P. Haughey did knowingly and purposely make or cause to be made the false entries as charged, you can not find the defendants guilty as aiders and abettors unless you are satisfied that they, with like intent, unlawfully and knowingly did or said something showing their consent to and participation in the unlawful and criminal acts of said Haughey and contributing to their execution.

And on page 123:

> Did Francis A. Coffin and Percival B. Coffin unlawfully and knowingly, and with like intent to injure and defraud, as charged, aid and abet said Haughey, knowing him to be the president of said bank, in knowingly and willfully misapplying the moneys, funds, and credits of said bank, in manner and form as charged in any of the counts of the indictment now on trial before you relating to that subject? If they did, they have committed the offense of aiding and abetting in the willful misapplication of the moneys, funds, or credits of said bank in manner and form as charged in the counts of the indictment relating to that subject, so far as such count or counts have been proved to your satisfaction.

XXXIV.

In refusing to give to the jury the forty-ninth instruction asked by the defendants.

> In this case the defendants are prosecuted as aiders and abettors of Theodore P. Haughey—that

is, it is charged that they aided and abetted him in the commission of the crime charged. Such being the charge, before you find the defendants guilty you must first find from the evidence, beyond a reasonable doubt, that Theodore P. Haughey committed the offense charged in any given count of the indictment—that is, in any charge of the misapplication of the funds of the bank it must be shown to your satisfaction, beyond a reasonable doubt, first, that the Indianapolis Cabinet Company, at the time it obtained the money charged to have been misapplied, was insolvent; second, that the money so furnished by the bank was lost; third, that there was a deliberate purpose on the part of Mr. Haughey at the time the discount was made or the money was furnished, if any was furnished, to injure or defraud the bank of such money; and, fourth, it must be further proved to your satisfaction, beyond a reasonable doubt, that in receiving and applying the money to the use of the Indianapolis Cabinet Company, if it was so received and applied, the defendants did so with a like intent.

Covered by the twenty-second assignment, page 160, old record.

XXXV.

In refusing to give instruction 51 asked by defendants.

The mere discount of an unsecured note, even if the maker and the president of a bank making the discount know it is not secured, is not a crime if the maker believed that he would be able to provide for it at maturity. In order that such a transaction may constitute a crime the original intent at the time the note or other paper is discounted must be to injure or defraud the bank and the parties must

> believe at the time of the transaction that the party whose obligation is taken will not be able to discharge it.

Covered by the charge of the court, pages 123–125.

This disposes of so much of the assignments of error as relate to the instructions asked for by the defendant and refused by the court.

To those assignments which relate to certain portions of the charge given by the court to the jury, we have not thought it necessary, after examining the brief of counsel for plaintiff in error on these points, to occupy further time for their consideration. The charge in its entirety, as well as in detail, speaks for itself, and it speaks well and to the credit of the judge who presided at the trial, despite the fact that the distinguished counsel whose names are appended to the brief for plaintiff in error have thought it proper—due to themselves as well as necessary to an adequate presentation of their client's case before this court—to say:

> We think no one can read this record without being satisfied that from beginning to end there was no relaxation of undue effort by the court to aid the Government in securing a conviction.

If that charge, grave and serious as it is, rests indeed upon facts, the judge who presided at this trial, instead of being commended, should be impeached.

HOLMES CONRAD,
Solicitor-General.